149 U.S. 766

RECORD, CASE No. 13,637.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~418~~. 90

GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, AND HARRINGTON BROWN, PLAINTIFFS IN ERROR,

vs.

GEORGE N. BEALE AND ELIZABETH B. BEALE.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 17, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 4, 1892.

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1 In the Supreme Court of the District of Columbia.

Declaration, &c. Filed Apr. 2, 1884.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife, Plaintiffs,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, Thomas B. Brown, and Harrington Brown, Defendants.
No. 25218. At Law.

Declaration in ejectment.

1. The plaintiffs, who are husband and wife, sue the defendants to recover one equal undivided moiety of the original lots numbered nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in the square numbered two hundred and seventy-five (275), in the city of Washington, in the District of Columbia, in
2 which the plaintiff George N. Beale claims a life estate in virtue of his marital rights with his coplaintiff, and the plaintiff, his said wife, claims the fee simple, and of which they were lawfully possessed, to wit, on the first day of May, A. D. 1881, when the defendants entered the same and unlawfully ejected the plaintiffs therefrom and unjustly detain the same from the plaintiffs.

2. And the plaintiffs, who are husband and wife, further sue the defendants to recover one equal undivided moiety of the original lots numbered nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in the square numbered two hundred and seventy-five (275), in the city of Washington, in the District of Columbia, in which the plaintiffs claim the fee simple and of which they were lawfully possessed, to wit, on the first day of May, A. D. 1881, when the defendants entered the same and unlawfully ejected the plaintiffs therefrom and unjustly detain the same from the plaintiffs.

3 And the plaintiffs claim the possession of one equal undivided moiety of the said lots, with the appurtenances thereto belonging, and the costs of this suit.

EDWARDS & BARNARD,
Att'ys for Plaintiffs.

Notice to Plead.

The defendants are to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

EDWARDS & BARNARD,
Att'ys for Plaintiffs.

Summons, &c. Issued April 2d, 1884.

In the Supreme Court of the District of Columbia, the 2d Day of April, 1884.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife, Plaintiffs,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, Thomas B. Brown, and Harrington Brown, Defendants.
} At Law. No. 25218.

4 The President of the United States to the defendants, Greeting:

You are hereby commanded to appear in this court on the first day of its first special term occurring 20 days after service of this writ on you to answer the plaintiffs' suit and show why *he* should not have judgment against you for the cause of action stated in *his* declaration.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

EDW'DS & BARNARD, *Attorneys.*

NOTE.—The special terms of the court commence on the first Tuesday of every month, except August, in which month there is no term of the court.

Marshal's Return.

Served copies of the declaration, notice to plead, affidavit, and this summons on the defendant George W. Brown the 3d day of April, 1884.

CLAYTON McMICHAEL, *Marshal.*

5 *Demurrer. Filed April 29, 1884.*

In the Supreme Court of the District of Columbia, the — Day of ——, 188–.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, and HARRINGTON BROWN.
} At Law. No. 25218.

The defendants say that the declaration is bad in substance.

HENRY WISE GARNETT,
Att'y for Def'ts.

One of the matters of law intended to be argued is that there is a misjoinder of the plaintiffs in this case.

HENRY WISE GARNETT,
Attorney for Def'ts.

Service of copy acknowledged April 29, 1884.
EDWARDS & BARNARD, *For Pl'ffs.*

6 *Joinder in Demurrer. Filed May* 23, 1884.

In the Supreme Court of the District of Columbia.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife
vs.
GEORGE W. BROWN *et al.*
} No. 25218. Law.

Joinder in demurrer.

The plaintiffs say that the declaration is good in substance.
EDWARDS & BARNARD,
Att'ys for Plaintiffs.

Notice of Trial, &c. Filed April 1, 1885.

In the Supreme Court of the District of Columbia.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife,
vs.
GEORGE W. BROWN *et al.*
} Law. No. 25218.

Take notice that the issue joined in this case will be tried
7 at the next term of this court.
EDWARDS & BARNARD,
Att'ys for Plaintiffs.

April 1, 1885.

To Henry Wise Garnett, Esq., att'y for def'ts.

Service acknowledged this 1st day of April, 1885, and copy waived.
HENRY WISE GARNETT,
Att'y for Def'ts.

Note of Issue. Filed April 1, 1885.

In the Supreme Court of the District of Columbia.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife,
vs.
GEORGE W. BROWN *et al.*
} No. 25218. Law.

Note of issue.

Edwards & Barnard, att'ys for plaintiffs; Henry Wise Garnett, att'y for defendants.

Last pleading filed May 23, 1884.
EDWARDS & BARNARD,
Att'ys for Plaintiffs.

April 1st, 1885.

8 *Notice of Hearing of Demurrer, &c. Filed May* 25, 1885.

In the Supreme Court of the District of Columbia.

BEALE & WIFE
vs.
BROWN & *al.*
} No. 25218. Law.

To H. W. Garnett, Esq., att'y for defendants:

You are hereby notified that on Friday, the 29th day of May, 1885, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the plaintiffs will call up the demurrer interposed by the defendants in this cause for hearing.

EDWARDS & BARNARD,
Attorneys for Plaintiffs.

Service and copy acknowledged this 23d day of May, 1885.
H. W. GARNETT, *For Def'ts.*

Court Proceedings.

9 Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing the second Monday, it being the eleventh day, of May, A. D. 1885.

MONDAY, *May 11th, A. D.* 1885.

By order of Walter S. Cox, justice, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

* * * * * * *

SATURDAY, *June* 20, *A. D.* 1885.

Session resumed pursuant to adjournment, Cox, justice, presiding.

* * * * * * *

GEORGE N. BEALE & WIFE, Pl'ffs,
vs.
GEORGE W. BROWN *et al.*, Def'ts.
} At Law. No. 25218. Cal. 681.

10 Upon hearing the defendants' demurrer to the plaintiffs' declaration it is considered that said demurrer be, and the same is hereby, overruled, and, on motion, leave is granted the defendants to plead further in twenty days from this day.

Plea of Not Guilty. Filed July 10, 1885.

In the Supreme Court of the District of Columbia, the 10th Day of July, 1885.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife, Plaintiffs,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, Thomas B. Brown, and Harrington Brown, Defendants.
} At Law. No. 25218.

Now come the defendants, by their attorneys, Henry Wise Garnett and Conway Robinson, Jr., and for a plea to the plaintiffs' declaration say they are not guilty as alleged.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Defendants.

11 *Joinder of Issue on Defendants' Plea. Filed July* 11, 1885.

In the Supreme Court of the District of Columbia.

GEORGE N. BEALE *et al.*
vs.
GEORGE W. BROWN *et al.*
} 25218. Law.

The plaintiffs join issue on the defendants' plea.

EDWARDS & BARNARD.

Court Proceedings.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court, division No. 1, in and for said District, commencing the third Monday, it being the 16th day, of May, 1887.

MONDAY, *May 16th, A. D.* 1887.

By order of Walter S. Cox, justice, presiding, one of the justices of said supreme court, the court is opened by proclamation of the marshal pursuant to order of court.

* * * * * * *

12 WEDNESDAY, *June 15th*, 1887.

The court resumes its session pursuant to adjournment, Justice Cox presiding.

* * * * * * *

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, and HARRINGTON BROWN. } At Law. No. 25218.

Now come here as well the plaintiffs, by their attorneys, Messrs. Edwards & Barnard, as the defendants, by their attorney, Mr. Garnett, and a jury of good and lawful men of this District, to wit, William H. West, Joseph R. Spransy, John V. Shelton, George Cowie, Weston B. Turner, John D. Patten, Henry H. Pinkney, Frederick A. Schmidt, Millard Metzger, Samuel Polkinhorn, Charles Baum, and Joseph W. Hooper, who, being duly sworn to try the issues above joined, after a partial hearing of the case, are respited until the meeting of the court to-morrow morning.

13 THURSDAY, *June* 16, *A. D.* 1887.

Session resumed pursuant to adjournment, Cox, justice, presiding.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, and HARRINGTON BROWN. } No. 25218. At Law. Cal. 125.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday; whereupon the plaintiffs, by their said attorneys, say they will not further prosecute this suit against defendants William V. H. Brown, Thomas B. Brown, and Harrington Brown; therefore it is considered that the plaintiffs, as to said defendants William V. H., Thomas B., and Harrington Brown, take nothing by this suit, and that the said defendants William V. H., Thomas B., and Harrington Brown go thereof without day, and the said jury, after the case is given them in charge,
14 on their oath say as to defendant George W. Brown that they find said issue in favor of the plaintiffs for possession and costs; therefore it is considered that the plaintiffs recover against said defendant George W. Brown for one equal undivided moiety of the original lots numbered nine, ten, eleven, twelve, thirteen, and fourteen, in square numbered two hundred and seventy-five, in the city of Washington, in the District of Columbia, as aforesaid found, and $—— for their costs of suit, and have execution thereof.

Motion for New Trial. Filed June 17, 1887.

In the Supreme Court of the District of Columbia, the 17th Day of June, A. D. 1887.

GEORGE N. BEALE and ELIZABETH B. BEALE, Plaintiffs,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, Thomas B. Brown, and Harrington Brown, Defendants.
At Law. No. 25218.

15 And now comes the defendant George W. Brown and moves the court to grant a new trial of this cause on account of errors of law in the rulings of the presiding justice at and during the trial of this cause.

And the said defendant also moves the court to grant a new trial upon exceptions taken to the rulings of the presiding justice during the trial of this cause.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Defendant Geo. W. Brown.

Overruled.
W. S. COX, *J.*

Appeal to General Term. Filed June 17, 1887.

In the Supreme Court of the District of Columbia, the 17th Day of June, A. D. 1887.

16 GEORGE N. BEALE and ELIZABETH B. BEALE, Plaintiffs,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, Thomas B. Brown, and Harrington Brown, Defendants.
At Law. No. 25218.

The clerk will enter an appeal to the general term of this court from the judgment made and pronounced herein on the 16th day of June, A. D. 1887, in the circuit court No. 1 by said court last mentioned.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Defendant George W. Brown.

Court Proceedings.

TUESDAY, *June 21st, A. D.* 1887.

Session resumed pursuant to adjournment, Cox, justice, presiding.

* * * * * * *

17 GEORGE N. BEALE and WIFE, Pl't'ffs,
vs.
GEORGE W. BROWN, Def't. } At Law. No. 25218.

Upon hearing said defendant's motion for a new trial, it is considered that said motion be, and the same is hereby, overruled. Appeal by defendant.

Order for Defendant to Give Bond. Filed June 21, 1887.

In the Supreme Court of the District of Columbia.

GEORGE N. BEALE and ELIZABETH B. BEALE,
Plaintiffs,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, Thomas B. Brown, and Harrington Brown,
Defendants. } At Law. No. 25218.

It is this 21st day of June, A. D. 1887, hereby ordered by the court that the defendant George W. Brown shall give an undertaking in the form hereto annexed, in order to supersede the judgment
18 made and pronounced against him in this cause by the circuit court (No. 1) on the sixteenth day of June, A. D. 1887, and that such undertaking when given and approved by the court or one of the justices shall be satisfactory and sufficient in character and in all respects and shall supersede said judgment.

By the court:

W. S. COX, *J.*

Undertaking for Appeal by Plaintiffs to Gen'l Term, Annexed to the Aforegoing Order of June 21*st*, 1887. *Filed June* 21, 1887.

In the Supreme Court of the District of Columbia, the 21st Day of June, A. D. 1887.

GEORGE N. BEALE and ELIZABETH B. BEALE,
Plaintiffs,
vs.
GEORGE W. BROWN, WILLIAM V. H. BROWN, Thomas B. Brown, and Harrington Brown,
Defendants. } At Law. No. 25218.

The defendant George W. Brown having appealed to the
19 general term from the judgment pronounced herein against him by the circuit court (No. 1) on the sixteenth day of June, A. D. 1887, and James E. Fitch, his surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay

its judgment which they agree may be pronounced against all of them.

GEO. W. BROWN, *Appellant.*
JAMES E. FITCH,
Surety, 1437 *Pa. Ave.*

Witness:
JOHN R. WALTER.

Approved.
W. S. COX, *J.*

SATURDAY, *July 9th, A. D.* 1887.

Session resumed pursuant to adjournment, Cox, justice, presiding.

* * * * * * *

The court orders the term extended to settle bills of exceptions in all cases entitled thereto.

20 Filed March 2d, 1888.

GEORGE N. BEALE & WIFE, Pl'ffs,
vs.
GEORGE W. BROWN *et al.*, Def'ts. } At Law. No. 25218.

Now again come here the defendants, by their said attorneys, and tender to the court their bills of exceptions to the rulings of the court on the trial of this case, and pray that they may be duly signed, sealed, and made a part of the record now for then, which is done accordingly.

21 *Bill of Exceptions. Filed Mar.* 2, 1888.

In the Supreme Court of the District of Columbia.

GEORGE N. BEALE and ELIZABETH B. BEALE,
His Wife, Plaintiffs,
vs.
GEORGE W. BROWN *et al.*, Defendants. } At Law. No. 25218.

Be it remembered that at the trial of this cause the plaintiffs, to maintain the issues on their part joined, offered in evidence the records of the following deeds for the property in which the plaintiffs claim an interest, namely, of a deed dated September 16th, 1829, and recorded December 9th, 1829, in Liber W. B. 28, folio 181, made by Thomas Peter to Richard Smith, trustee, and of another deed dated June 28th, 1830, and recorded June 30th, 1830, in Liber W. B. 31, folio 139, made by Thomas Peter to Richard Smith, trustee, and also of a deed dated September 21st, 1832, and recorded March 5th, 1833, in Liber W. B. 45, folio 133, from Richard Smith,
22 trustee, to Thos. B. Brown, as the same are recorded in said libers among the land records of the District of Columbia,

the said records of said deeds being in the words and figures following, to wit:

Thomas Peter to Richard Smith. } Deed of trust. Recorded 9th December, 1829, in W. B. 28, folio 181.

This indenture made this sixteenth day of September in the year of our Lord eighteen hundred and twenty-nine between Thomas Peter of Washington county in the District of Columbia of the one part and Richard Smith, cashier, of the office of discount and deposit of the Bank of the United States at the city of Washington, of the same county and District aforesaid, of the other part.

Whereas the said Thomas Peter is indebted to the president, directors and company of the Bank of the United States, and is also indebted to the Farmers' and Mechanics' Bank of Georgetown,
23 in several large sums of money, for which said sums of money judgments have been obtained against the said Thomas Peter, in the circuit court of the District of Columbia, for the county of Washington by the president, directors and company of the Bank of the United States, and by the said Farmers' and Mechanics' Bank of Georgetown, and

Whereas the said Thomas Peter is desirous of securing the payment of the said several sums of money so due to the said named banks as aforesaid.

Now therefore this indenture witnesseth, that the said Thomas Peter in consideration of the premises and in further consideration of the sum of one dollar current money to him in hand paid by the said Richard Smith the receipt whereof he doth hereby acknowledge, hath given, granted, bargained and sold, aliened, enfeoffed and confirmed and doth hereby give, grant, bargain and sell, alien-, enfeoff*ed*, confirm and convey unto the said Richard Smith his heirs and assigns, the following-described lots of ground with the buildings and appurtenances
24 thereto belonging situate in the city of Washington and District of Columbia, and distinguished on the plan of said city as follows, namely in square one. Lot number twenty-two, in square number two; part of lot number one, fronting fifty-two feet, by about three hundred feet deep, water property, in square five; lots number seven, nine, ten, nineteen, twenty and twenty-five, in square number six; lots number two, three and four, in square number eleven; lot number three in square number twelve; lots number four, six and seven in square south of square number twelve; lot number four in square thirteen; lots six and eleven in square fourteen; lots five, six, seven, and nine, in west of square number fourteen; lot two, on Pennsylvania avenue and the basin, in square fifteen; lots five, eight and twelve in square sixteen; lots two, seven, eight, twelve, thirteen, fourteen, eighteen and west half of nineteen, with the three-story brick dwelling-house
25 and other buildings thereon last in the occupation of Mr. Rush, in square seventeen; lots six, seven, and eight in square eighteen; lot two in square nineteen; lots one, two and three,

in square twenty; lots thirteen, fourteen, fifteen, seventeen and eighteen in square twenty-two; lots three and four in square twenty-four; lot thirty-two, in square twenty-five; lots twenty-six, twenty-seven and twenty-eight, in square twenty-eight; lots two, twenty, twenty-one and twenty-two in square twenty-nine; lot five in square thirty; lot five in square thirty-one; lots three and nine in square thirty-two; lots one, two and fifteen, in square thirty-three; lots fourteen and seventeen, in square thirty-seven; lots nine, fourteen and twenty-two, in square forty; lot four in square forty-one; lots seven, nine and ten in square forty-two; lot six in square fifty-one; lots nineteen, twenty and twenty-one, in square fifty-four; part of lot ten fronting on Circle and Pennsylvania avenue, twenty-eight feet ten inches, also lots eleven, thirteen and sixteen in same
26 square; in square five lots four and six; in square seventy-one, lot one; in square seventy-two, lots five and seven; in square seventy-four, part of lot eight, leased for ten years to Thomas (Conker) and now in his possession; in square seventy-three, lots three, four, five, eleven, twenty and twenty-one; in square one hundred, lots six, eleven, twelve, thirteen, twenty-eight, twenty-nine, thirty-five and thirty-six; in square one hundred and fifty, lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen; in square one hundred and seventy-six, lots one, two, three, four, five, six and seven; in square one hundred and seventy-seven, lots one, two, three, ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen; the whole of square one hundred and eighty-nine; in square one hundred and ninety-one, lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty; in
27 square two hundred and six, lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four; in square two hundred and thirty-five, lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty; in square two hundred and thirty-eight, lots ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen; the whole of square two hundred and seventy-two; in square two hundred and seventy-five, lots nine, ten, eleven, twelve, thirteen, and fourteen; in square three hundred and two, lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen; in square three hundred and three, lots one, two, three, four, five, six, seven, and eight; the whole of square three hundred and thirty; the whole of square three hundred and thirty-one; the whole of square three hundred and fifty-seven; the whole of square
28 three hundred and fifty-eight; in square three hundred and sixty-one, lots six, seven, eight, nine, ten, and eleven, also the following lots and parcels of ground situate in Georgetown in Washington county aforesaid and all situate in Peter's square in said town, viz., lots four, sixteen, twenty-six, twenty-seven, thirty-seven, and fifty all fronting on Water street in said town, also lot ten, with a two-story frame house thereon situate on Bridge street in said town,

also lots twenty-three, thirty-six, forty-six, forty-seven, and fifty-seven, situate on Congress street in said town, also lots sixty-six, sixty-seven, and sixty-eight fronting on Causeway street in said town, also lots eighteen, twenty-nine, and thirty-two fronting on Niagara street and lots fifty-two and fifty-three fronting on South street in said town, also the following piece or parcel of ground situate in Washington county in the District of Columbia, and near to the said city of Washington, it being a part of a tract of land called "Mount Pleasant" situate on the east side of the turnpike
29 road, leading from Washington city to Rockville, containing one hundred and forty acres of land, which said piece or parcel of land is now cultivated by the said Thomas Peter as a farm, and is now in the possession of him the said Thomas Peter, also a wood lot containing twenty-four acres of land, part of "Mount Pleasant" situate west of Commodore Porter's called Thomas Peter's wood lot and now in his possession.

To have and to hold the premises so as aforesaid described with their appurtenances unto and to the use of the said Richard Smith his heirs and assigns, in trust for the following purposes that is to say that he the — Richard Smith shall sell the aforesaid-described lots of ground and lands (which have already been advertised for sale in the newspapers of Washington and Georgetown with the assent of the said banks and of the said Thomas Peter, upon the terms mentioned in said advertisement) and out of the proceeds arising from said sale after first paying the expenses attend-
30 ing the execution of the trust, shall apply to the payment and discharge of the debts due as aforesaid from the said Thomas Peter to the said president, directors and company of the Bank of the United States and the Farmers' and Mechanics' bank upon which judgments have been rendered as aforesaid—the said judgments to be paid off and discharged by the said Richard Smith according to their legal priority, that is to say, the judgments first rendered against the said Thomas Peter to be paid first and so on until the said judgments are paid.

And the said Thomas Peter for himself, his heirs, executors and administrators doth hereby covenant to and with the said Richard Smith, his heirs and assigns that he will warrant and forever defend the title of the aforesaid described lots of ground and lands, against the claim of any and of every person whatsoever, and also that he the said Thomas Peter and his heirs, shall and will at all times hereafter, at the reasonable request of the said Richard Smith or his assigns under this deed execute — acknowledge
31 according to law and deliver to him or them any other or further instrument, which he or they or his or their counsel learned in the law, may require or advise for the better conveyance or more perfect assurance of the premises as they are herein intended to be conveyed or assured unto the said Richard Smith trustee as aforesaid.

In testimony whereof the said Thomas Peter hath hereunto set his hand and seal the day and year first herein mentioned.

THOMAS PETER. [SEAL.]

Signed, sealed and delivered in the presence of—
DAN'L BUSSORD.
JAMES GETTYS.

DISTRICT OF COLUMBIA, }
Washington County. }

On this sixteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, before the subscribers, two of the justices of the peace in and for the county and District aforesaid, personally appeared Thomas Peter, the party grantor of
32 the within instrument, and acknowledges the same to be his act and deed, and at the same time personally appeared before us Martha Peter, the wife of the said Thomas Peter, and acknowledges the same instrument to be her act and deed; and the said Martha Peter, being by us privately examined apart from and out of the hearing of her said husband whether she doth make this her acknowledgment willingly and freely and without being induced thereto by fear or threats of or ill usage of her husband or through fear of his displeasure, saith that she doth.

DANIEL BUSSORD.
JAMES GETTYS.

I do authorize and empower Richard Smith, the trustee named in the foregoing deed from me to him, to retain in his hands any moneys which may remain in his hands from the sales of the lots and lands therein conveyed to him after the payment of the debts due from me to the said president, directors, and company of
33 the Bank of the United States and the Farmers' and Mechanics' Bank of Georgetown, upon which judgments have been rendered against me in the circuit court of the District of Columbia, and I do assent that the said Richard Smith shall apply the said moneys so remaining in his hands (if any there should be) to the payment of the debt due from me upon judgments to the Union Bank of Georgetown as endorser for George Peter; and I do further assent and agree that the said Richard Smith shall, out of the proceeds of sale of the said lots and lands conveyed to him by the foregoing deed, *shall* pay to my wife, Martha Peter, for her sole use and benefit nine per centum of the moneys arising from said sales, after the expenses of said sale are first deducted, this sum being considered by the banks as well as myself as a fair equivalent for her dower interest in said property.

Witness whereof I do hereunto set my hand and seal this
34 the sixteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine.

THOMAS PETER. [SEAL.]

Teste: ROBERT P. DUNLOP.
SAH. SMITH.

Thomas Peter to Richard Smith. } Deed. Recorded 30th June, 1830, in W. B. 31, folio 139.

This indenture made the twenty-eighth day of June in the year eighteen hundred and thirty, between Thomas Peter of the county of Washington in the District of Columbia of the one part, and Richard Smith, cashier of the office of discount and deposit of the Bank of the United States in the city of Washington, in the same county of the other part:

Whereas the said Thomas Peter by his deed bearing date the sixteenth day of September last conveyed to the said Richard
35 Smith, certain lots and parts of lots and certain squares of ground, all lying in the city of Washington aforesaid and also certain lots and pieces of ground lying in Georgetown, in the county of Washington aforesaid; and also certain lots, pieces or parcels of land lying within the said county, in trust for certain uses and purposes declared and set forth in the said deed, all of which will more fully and at large appear by reference to the said deed recorded in the land records in the county of Washington aforesaid; and whereas it was the intention of the said Thomas Peter, in making the said deed to give to the said Richard Smith a power not only to sell the said lots, but to convey the same in fee to the respective purchasers thereof, when the same should be sold, which power, right and authority to convey was omitted to be expressed in terms in the said deed and the said omission, being only by accident and contrary to the intention of the parties to the said deed; and whereas also one of the squares and two parts of
36 lots, in the said city of Washington which were intended to be conveyed in the said deed are supposed to be insufficiently described therein, that is to say, the square therein described as "west of square number fourteen" which should have been described as "square west of square number fourteen" and the part of a lot described in said deed thus—"in square number two, part of lot number one, fronting fifty-two feet by about three hundred feet deep water property; and also that part of a lot described in the said deed thus:—"in square fifty-four, part of lot ten fronting on Circle and Pennsylvania avenue twenty-eight feet ten inches;" which said descriptions do not designate the particular part of each respective lot which was intended to be conveyed:

Now therefore to supply the omissions and deficiencies aforesaid this indenture witnesseth that the said Thomas Peter in consideration of the premises and of five dollars by the aforesaid
37 Richard Smith to him in hand paid before the sealing and delivery of these presents the receipt whereof is hereby acknowledged hath given, granted, bargained and sold aliened, enfeoffed, assigned, released and confirmed and doth hereby give, grant, bargain, and sell, alien-, enfeoff, assign, release, confirm, and convey unto the said Richard Smith and his heirs, all and singular the lots, squares, pieces and parcels of ground and all the tracts or parts of tracts and pieces of land which are mentioned, as conveyed or in-

tended so to be in and by the said Thomas Peter's aforesaid deed of trust to the said Richard Smith as by reference thereto (recorded as hereinbefore mentioned) will more fully and at large appear; and also more especially the square of ground lying in the city of Washington aforesaid and known as the square west of square number fourteen, on the public plat of the said city; and also all that part of lot numbered one in square numbered two, in the said city, being a section of the said lot near the middle thereof, beginning for the
38 said part, or section, at a point on the line of Twenty-seventh street west, fifty-four feet nine inches distant from the northeast corner of the said lot and running from the said point south with the said Twenty-seventh street west, fifty-four feet nine inches distant from the northeast corner of the said lot, and running from the said point south, with the said Twenty-seventh street fifty-two feet; thence west, at right angles to the said street, to the western limits of the said lot; thence north fifty-two feet; and thence in a right line to the beginning:

And also the southwest part of lot number ten in square number fifty-four in the said city of Washington, which part is in breadth twenty-eighty feet ten inches in front upon a circle at the junction of Pennsylvania and New Hampshire avenues, and thirty-five feet in the rear of the said lot, the said square and parts of two lots just described, being the same which were conveyed, or intended so to be, in the aforesaid deed of trust from Thomas Peter to Rich-
39 ard Smith under the insufficient description or designation mentioned and set forth in the recital of this instrument.

To have and to hold the said square and parts of two lots last herein described, and all and singular the other squares, lots, parts of lots, pieces and parcels of ground and all the tracks pieces or parcels of land, in and by the said deed of trust from Thomas Peter to Richard Smith, conveyed or intended so to be, and all the rights, privileges, advantages and appurtenances to each and every of them belonging or in any manner appertaining unto, and to the use of the said Richard Smith and his heirs, in trust however for the uses and purposes declared in the aforesaid deed of trust from Thomas Peter to Richard Smith so far as the said uses, purposes or trusts have not been already executed, and in trust also for the said Richard Smith or his heirs to convey the said squares, lots, pieces or parcels of ground and tracts, pieces or parcels of land in fee
40 to the respective purchasers thereof or their heirs or assigns whether the same have been already sold, or yet remain to be sold, by the said trustee, under the deed of trust herein aforesaid.

And the said Thomas Peter doth hereby ratify and confirm any and all conveyances which the said trustee hath hitherto made of any of the premises.

In testimony whereof the said Thomas Peter hath hereunto set his hand and seal the day and year first herein mentioned.

THOMAS PETER. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN COX.
JAMES GETTYS.

DISTRICT OF COLUMBIA, *County of Washington,* } *sct:*

This twenty-eighth day of June, in the year eighteen hundred and thirty, before the undersigned, two of the justices of the
41 peace of the county of Washington aforesaid, being within our said county, personally appears Thomas Peter, the party bargainer in and to the within and foregoing instrument, and acknowledges the same to be his act and deed.

JOHN COX.
JAMES GETTYS.

Richard Smith, trustee of Thos. Peter, to Thomas B. Brown. } Deed. Recorded 5th March, 1833, in W. B. 45, folio 133.

This indenture, made this 21st day of September in the year of our Lord eighteen hundred and thirty-two, between Richard Smith (the trustee appointed in and by a certain deed of trust hereinafter mentioned) as such trustee, of the one part and Thomas B. Brown, late of Washington, D. C., now of ——, of the other part:

Whereas a certain Thomas Peter of Georgetown being in-
42 debted to the president, directors, and company of the Bank of the United States and others as specified in the deed of trust hereinafter mentioned, did on the 16th day of September in the year of our Lord eighteen hundred and twenty-nine by his deed of that date, convey to the said Richard Smith and his heirs among other property, all those pieces or parcels of ground, lying and being in the city of Washington in the District aforesaid and designated on the plat of said city as lots numbered nine, ten, eleven, twelve, thirteen and fourteen in square numbered two hundred and seventy-five.

To have and to hold the premises to the said Richard Smith and his heirs in trust, for the purposes in said deed mentioned (which will more fully and at large appear by reference thereto) one of which purposes or declarations of trust, was that the said trustee should sell the said premises upon the terms and conditions and in the manner therein mentioned, in case the said debt or any part thereof should remain unpaid longer than the time in
43 said deed specified, and the said debts, or a part thereof, having remained unpaid longer than said time specified, the said Richard Smith at the request of the directors for the time being of the office of discount and deposit of the Bank of the United States at Washington, in the District of Columbia, did on the 17th day of September in the year of our Lord eighteen hundred and twenty-nine, proceed to sell, according to the conditions declared and the authority given him in and by said deed of trust, all the said lots of ground hereinbefore particularly described and sold the same to the said Thomas B. Brown for the sum of seventy-three dollars and three cents said sale being such an one as the said trustee deemed most for the interest of all the parties concerned therein.

Now therefore this indenture witnesseth, that the said Richard

Smith, as trustee as aforesaid, by virtue of the authority given to him in said deed of trust of the said Thomas Peter and not
44 otherwise in consideration of the premises, and of the aforesaid sum of seventy-three dollars, three cents by the said Thos. B. Brown to him in hand paid before the sealing and delivery of these presents, hath given, granted, bargained and sold, assigned, transferred and set over, and doth hereby give, grant, bargain and sell, assign, transfer, set over and convey unto the said Thomas B. Brown and his heirs, all the right, title interest and estate which the said Thomas Peter had in and to the premises last herein mentioned, at the time of his executing his aforesaid deed of trust:

To have and to hold the said premises and all the said right, title, interest and estate of the said Thomas Peter therein at the time of his executing his aforesaid deed of trust, unto the said Thomas B. Brown, and his heirs or assigns forever.

In testimony whereof, the said Richard Smith as trustee as aforesaid, and not otherwise, hath hereunto set his hand and seal the day and year first herein mentioned.

45 R'D SMITH, [SEAL.]
Trustee of Thos. Peter.

Signed, sealed and delivered in the presence of—
JNO. R. NOURSE.
JOS. L. RINGGOLD.

DISTRICT OF COLUMBIA, }
County of Washington. }

Be it known that on this 21st day of Sept., in the year of our Lord eighteen hundred and thirty-two, before the subscribers, two of the justices of the peace in and for the county and District aforesaid, personally appears Richard Smith, trustee, the grantor of the within instrument, and acknowledges the same to be his act and deed as trustee of Thomas Peter under the deed of trust hereinbefore mentioned.

S. A. H. SMITH, *J. P.*
R. S. BRISCOE, *J. P.*

46 To the admission of the records of said deeds and the admission of each of them in evidence the defendants and each of the defendants as the same were respectively offered in evidence made the following objections:

First. They and each of them objected because the acknowledgments to the same and to each of them were merely made before two justices of the peace, and at the date of said acknowledgments respectively there was no authority in two justices of the peace merely as such to take such acknowledgments.

Secondly. They and each of them objected because the said deed recorded in Liber W. B. 45, folio 133, purported to make a conveyance of the property therein described solely and exclusively under the authority of the said deed recorded in Liber W. B. 28, folio 181, whilst said deed recorded in Liber W. B. 28, folio 181, did not con-

tain or grant or bestow any power to convey said property or any part thereof.

Thirdly. They and each of them objected because nothing
47 was ever done under the said deed recorded in Liber W. B. 31, folio 139, or in execution of the powers or authority therein contained or given.

Fourthly. They objected because the said deed recorded in Liber W. B. 45, folio 133, not only purported to make a conveyance of the property therein described solely and exclusively under the authority of the said deed recorded in Liber W. B. 28, folio 181, which did not contain any power or authority to convey said property or any part thereof, but also set forth a sale of property therein described as having been made on September 17th, 1829, and showed on its face that it was made in execution of and to carry out said sale and none other, and could not therefore have been made under or derived any support or authority from the said subsequent deed dated on June 28th, 1830, and recorded on June 30th, 1830, in Liber W. B. 31, folio 139.

Fifthly. They objected because, the suit being an ejectment suit brought in this District, the plaintiffs in making proof of rec-
48 ord title should be required to go back to the original source of title and show a grant either from the State of Maryland or the United States.

Sixthly. They objected because, as stated by counsel for the defendant, the said Thomas Peter was merely a codevisee and heir with a number of others, and as such co-tenant could not make a good and sufficient or legal deed in severalty of the property so held in cotenantcy; that there has never been any good and sufficient or legal deed of partition between him and such other co-tenants nor any deed, conveyance, or transfer vesting in him a good title in severalty, nor had he ever in any way acquired a good title in severalty to the property described in the aforesaid deeds by him; that the outstanding title of his sister, Mrs. Elizabeth Dunlop, as a co-tenant with him had never been gotten in by him so as to get a good title in severalty, and that the plaintiff could not therefore, claiming under the said Thomas Peter, make out a good title in sev-
49 eralty such as would sustain an action of ejectment, and that such defects would appear if plaintiffs were required to go back to the original source of title and show a grant from the State of Maryland or the United States, and that the plaintiffs should be required so to do.

But the court overruled each and all of said objections and admitted all of said deeds in evidence against each and all of the defendants, and to each of said rulings respectively the defendants and each of them then and there duly excepted, and said exceptions were all noted on the minutes of the court at that time, and the defendants and each of them pray the court to sign and seal this their and each of their first bill of exceptions, which is accordingly done *nunc pro tunc* this 17th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

And thereupon the plaintiffs, to further maintain the said
50 issues on their part joined, offered in evidence the record of the case in equity cause No. 8974, brought by George W. Brown as sole complainant against George N. Beale and Elizabeth B. Beale *et al.* as defendants, the said record being in the words and figures following, to wit:

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

GEORGE W. BROWN, Compl't,
vs.
GEORGE N. BEALE and ELIZABETH B. BEALE and MARY C. BROWN, Def'ts. } No. 8974, Eq. Doc. 27.

To the honorable the justice holding a special term, in equity:

1st. Your complainant, George W. Brown, complains as follows: That he is a resident of the District of Columbia, and brings this suit in his own right; that the defendants George N. Beale
51 and Elizabeth B. Beale are both residents of the District of Columbia and are sued as follows: The defendant Elizabeth B. Beale in her own right as the only child and heir-at-law of Mistress Mary B. Wheeler, deceased, who was the sister and one of the heirs-at-law of Thomas B. Brown, deceased, formerly of the District of Columbia, afterwards a resident of Indiana; and the defendant George N. Beale is sued in his own right as husband of the defendant Elizabeth B. Beale, and the defendant Mary C. Brown is sued in relation to her dower rights in the hereinafter-described property as the wife of the complainant, George W. Brown.

2d. That heretofore, to wit, as your complainant is informed and believes, in or about the year eighteen hundred and thirty-eight (1838), Thomas B. Brown, of the District of Columbia, departed this life intestate and unmarried; that he left as his heirs-at-law the defendant Elizabeth B. Beale, the only child of his sister, Mary B.
52 Wheeler, who was at the time of her death the wife of John H. Wheeler, now deceased, formerly of the State of North Carolina and afterwards of the District of Columbia, and also his brother, the father of your complainant, William V. H. Brown.

3d. That at the time of his death the said Thomas B. Brown was the legal and equitable owner (and possessed) of certain real estate in the city of Washington, in the District of Columbia, the same being original lots nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in square two hundred and seventy-five (275), in said city, and the same, under the law of descents in force in the said District, descended to his heirs-at-law, the same being the persons named in the preceding paragraph of this bill.

4th. That the said pieces or parcels of real estate were, as your complainant is informed, believes, and therefore avers, at the
53 time of the death of the said Thomas B. Brown and for many years after, of little value, being in a portion of the city limits which was left in the condition of commons, in which no

streets had been actually laid out and in which it would have been difficult, if not impossible, to locate the said pieces of real estate without an actual survey; that owing, as your complainant believes and therefore avers, to the little value of said property, no attention was paid thereto by the said heirs-at-law of Thomas B. Brown and the same was, in 1842, by the corporation of Washington sold for taxes and purchased by Obediah B. Brown, the grandfather of your complainant and the defendant Elizabeth B. Beale, and, the said property not having been redeemed, the corporation of Washington, by deed dated November 23d, eighteen hundred and forty-six, conveyed said pieces or parcels of real estate to the said Obediah B. Brown; to which conveyance, duly recorded on December 12, 1846, in Liber W. B. 130, folio 111 *et seq.*, one of the land records of the District
54 of Columbia, reference is hereby made, and it is prayed that it may be taken as a part hereof; that subsequently thereto the said Obediah B. Brown conveyed the said pieces or parcels of land to the above-named William V. H. Brown, one of the heirs-at-law of the above-named Thomas B. Brown, as will be seen by reference to said deed dated May 30th, 1848, and duly recorded in Liber W. B. 143, folio 352, one of the land records of the District of Columbia, to which reference is hereby made, and it is prayed to be taken as a part hereof.

5th. That the grantee in the said deed (mentioned in the last paragraph of the bill) paid the taxes, assessments, and charges on the said real estate as the same were laid, assessed and charged, and fell due up to the time of his death, which death occurred in the year eighteen hundred and sixty-two; that he died intestate, leaving a widow, Adelaide J. Brown, the mother of this com-
55 plainant, and his brothers and coheirs with him of his father William, Harrington Brown, Thomas B. Brown, and William V. H. Brown; that the said widow and heirs of William V. H. Brown, deceased, have continued to pay the taxes, assessments, and charges on said real estate as the same were laid, assessed or charged, and fell due up to the present time, which taxes, assessments, and charges so paid amount to a large sum of money, and, with interest thereon from the dates of payments, amount to between the sum of nine and ten thousand dollars.

6th. That, as your complainant is informed and believes and avers, during all the time of the life of the said William V. H. Brown and up to a few years ago the said real estate has remained in the conditions of commons, without any streets being actually laid out in or through said commons of which it formed a part, and it has always been and is now without any improvements upon it;
56 that some years since the municipal government ran streets through said commons in execution of the original plans of the city of Washington, and for the said streets taxes and assessments were made against said real estate, which taxes and assessments were paid by your complainant and his coheirs with the widow of the said William V. H. Brown, deceased.

7th. That your complainant resides in this District and is engaged in the business of a real-estate agent, and his mother, the widow of

the said William V. H. Brown, and his coheirs reside outside of the District of Columbia, at a great distance therefrom; and therefore, for convenience in the management of and disposal of said real estate, if necessary, and to fully empower the complainant to act in all matters in regard to the same, the said mother of this complainant,

57 the widow of William V. H. Brown, united with the heirs of the said William and their wives in two deeds, by which they conveyed their interest in the said real estate to this complainant; — which deeds, dated July (11th) eleventh, A. D. 1883, and July eighteenth (18th), 1883, and duly recorded on February twenty-third (23d), A. D. 1884, in Liber 1070, fol's 426 and 427 *et seq.*, one of the land records of the District of Columbia, reference is hereby made, and it is prayed to be taken as a part hereof.

8th. That the complainant accepted said deed and the management of the property on behalf of himself and his coheirs, and in the management of the said property caused an examination of the title to be made, and by such examination it was ascertained that the said defendant, Elizabeth B. Beale, had an interest in said real estate as the only child and heir-at-law of Mary B. Wheeler, deceased, who was the sister and one of the heirs-at-law of Thomas B. Brown, deceased.

58 9th. That thereupon your complainant directed a negotiation to be opened through his solicitor with the said defendant to inform her of her interest in the said property with a view to purchase the same, and your complainant is informed, believes, and avers that the said negotiation was so opened and the defendants George N. Beale and Elizabeth B. Beale were each informed of her interest in the said property, and the defendant Elizabeth B. Beale was requested to state at what price she would be willing to sell the same.

10th. That the defendants to this bill, Elizabeth B. Beale and George N. Beale, have, subsequently to being so informed of the interest of the defendant Elizabeth B. Beale in said property, brought suit on the law side of this honorable court against this complainant and his coheirs, William V. H. Brown, Thomas B. Brown, and

59 Harrington Brown, claiming to recover one equal undivided moiety of the property above described in this bill, the said suit being suit number 25218 at law, to which reference is hereby made, and it is prayed that it may be considered as a part of this bill.

11th. That this complainant has not and he is informed, believes, and avers that neither his coheirs nor his mother nor his father, the said William V. H. Brown, has ever disputed and this complainant does not now deny or dispute the right of the defendants in and to one equal undivided moiety of the property described in this bill, and that no demand for the same has ever been made upon him or his coheirs nor, to his information and belief, upon his father, and that said suit at law was unnecessary, uncalled for, and is only productive of useless expense, and this complainant ought not in equity and good conscience to be made to bear any part of the expense thereof. He avers, however, that while the defendants are

entitled to one equal undivided moiety of the property, they
60 are entitled to the same subject to the lien of one-half of the money expended by this complainant, his coheirs, his mother, and his father, the said William V. H. Brown, for taxes, assessments, and charges on the said property, and also the amount paid by him to the said Obediah B. Brown for the above-named conveyance and the amount paid by the said Obediah B. Brown to the corporation of Washington, together with interest on the same from the dates said payments were made.

12th. That the said before-mentioned property is divided into lots which front on different streets and are of different sizes and values; that your complainant desires a partition or sale of said property so that he may hold his interest therein in severalty; that the amount due to this complainant from the defendants for the half of the taxes, assessments, and charges on said property is between four and five thousand dollars, which debt is in equity a lien upon
61 their interest in the said property, and this debt being added to the interest of your complainant in the property will make it extremely difficult, if not impossible, to fairly partition the property in kind and it will be greatly to the advantage of all the parties in interest to have the said property sold and the proceeds divided according to law among the parties entitled thereto.

Your complainant therefore prays:

1st. That the defendants George N. Beale and Elizabeth B. Beale, may, by the order of this honorable court, be restrained and enjoined from further prosecuting their suit at law against this complainant and his brothers, William V. H. Brown, Thomas B. Brown, and Harrington Brown, for the one equal undivided moiety of the property described in this bill, being suit numbered 25218 on the law side of this honorable court, and that they be further enjoined from commencing any other suit on the law side of this honorable court
62 against this complainant and his said brothers or any or either of them to recover any portion of or interest in said real estate.

2d. That an account may be taken of all the taxes, assessments, and charges paid and money advanced by this complainant, by him and his said brothers and his and their father, the said William V. H. Brown, for or on account of said real estate, and that when the same is ascertained that one-half thereof, with interest thereon from the dates of payments, may be decreed to be paid to this complainant by the defendants Elizabeth B. Beale and George N. Beale, and to be a charge and lien upon their interest in the said property.

3rd. That the said property mentioned in this bill may be sold by trustees or a trustee appointed by this honorable court and the proceeds divided according to law among the parties entitled thereto according to their interest, and that out of such partition as
63 the defendants may be entitled to that this complainant may be paid a sum equal to one-half of the taxes, assessments, and charges paid out and money advanced by this complainant and his said brothers and by their father for or on account of said property, together with interest thereon from the dates of said payments; or

if, in the judgment of this honorable court, a partition of said property in kind should be made, then that in such partition *that* there may be allotted and set off to this complainant, in addition to the portion set off to him for his moiety, so much of said property from the moiety of the defendants as may equal in value one-half of the taxes, assessments, and charges paid and money advanced by the father of this complainant and by the complainant and by his said brothers for or on account of said property, together with interest thereon from the dates of said payments.

4th. That all proper accounts may be taken in the case.

64 5th. That this complainant may have the subpœna of this honorable court directed to the defendants to this bill, who are George N. Beale, Elizabeth B. Beale, and Mary C. Brown, commanding them to appear and answer this bill, etc.

6th. That your complainant may have such further and other relief as to the nature of his case may appear applicable by this honorable court, the premises being considered.

GEO. W. BROWN.

HENRY WISE GARNETT,
Sol'r for Compl't.

I do solemnly swear that I have read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

GEO. W. BROWN.

Sworn to before me April 24, 1884.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

65 Supreme Court, District of Columbia.

Order book.

GEO. W. BROWN
vs.
BEALE, GEO. W., *et al.* } 8974. Eq.

The cleark will enter this cause dismissed.

HENRY WISE GARNETT,
Sol. for Compl't.

April 30th, 1884.

Dismissed as ordered.

BY THE CLERK.

'84, 4, 30.

To the admission of said record in evidence the defendants and each of the defendants as and when the same was offered in evidence made the following objections:

First. They and each of them objected because the bill in said cause was not filed until after the bringing of this ejectment suit.

66 Secondly. They and each of them objected because the said equity suit was afterwards discontinued by the complainant therein.

Thirdly. They and each of them objected because the record in said cause contained nothing upon which the complainants were entitled to rely as an estoppel or which would be binding upon the defendants in this ejectment suit or upon any of them.

Fourthly. The defendants William V. H. Brown, Thomas B. Brown, and Harrington Brown and each of them particularly objected because said bill was only brought by, signed by, and sworn to by the said George W. Brown, and therefore was not, nor was anything therein contained, admissible in evidence aga-nst them or any of them, they not being parties to said suit; and 1—

But the court overruled each of said objections and admitted the record of said equity cause No. 8974 in evidence, and to each
67 of said rulings respectively the defendants and each of them then and there duly excepted, and said exceptions were all noted on the minutes of the court at that time; and the defendants and each of them pray the court to sign and seal this their and each of their second bill of exceptions, which is accordingly done *nunc pro tunc* this 17th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

And thereupon the plaintiffs, to further maintain the said issues on their part joined, offered in evidence the records of certain deeds by Adelaide J. Brown, widow, Harrington Brown *et ux.*, Thomas B. Brown *et ux.*, and William V. H. Brown *et ux.* to George W. Brown, dated July 11th, 1883, and July 18th, 1883, and recorded February 23d, 1884, in Liber No. 1070, folios 426, 427, and 428 *et seq.*, conveying the property in which the plaintiffs claimed an interest, as the same are recorded in said liber among the land records of the District of Columbia, the said records of said deeds being in the words and figures following, to wit:

68 Adelaide J. Brown *et al.* to George W. Brown. } Recorded February 23d, 1884, 1 p. m., in Liber 1070, folio 426. Deed.

This indenture made this eleventh day of July in the year of our Lord one thousand eight hundred and eighty-three between Adelaide J. Brown of the city of Washington, District of Columbia (widow), Harrington Brown and Minnie G. Brown his wife of the city of Los Angeles State of California of the first part and George W. Brown of Washington city, District of Columbia of the second part witnesseth, that the said parties of the first part for and — consideration of the sum of five (5) dollars current money of the United States to them in hand paid by the said party of the second part, the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged have granted, bargained and sold, aliened, conveyed and confirmed, and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm, unto and to the

use of the said party of the second part, his heirs and assigns,
69 all those certain pieces or parcels of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished as lots numbered nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) in square numbered two hundred and seventy-five (275) according to the original ground plat or plan of said city together with the rights, easements, privileges and appurtenances to the same belonging or in anywise thereto appertaining.

To have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging unto and to the only use and benefit of said party of the second part, his heirs and assigns. And the said parties of the first part for themselves, their heirs, executors and administrators do hereby covenant with said party of the second part, his heirs and assigns, that the said hereinabove-described land and premises, with the appurtenances unto said party of the second part his heirs and assigns, from and against all persons claiming by, through or under said parties of the
70 first part or their heirs or assigns or any one of them the said parties of the first part and their heirs shall and will forever warrant, and defend by these presents; and further, that any act or deed deemed by counsel learned in the law, requisite and necessary the more perfectly to assure unto the said party of the second part his heirs and assigns, the said land and premises hereinabove granted, the said parties of the first part and their heirs shall and will at all times, at the cost of the person requesting the same, do, perform, execute and deliver.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ADELAIDE J. BROWN. [SEAL]
HARRINGTON BROWN [SEAL]
MINNIE G. BROWN [SEAL]

Signed, sealed and delivered in the presence of
JNO. W. MAURY, JR.

DISTRICT OF COLUMBIA, *To wit:*

I, Jno. W. Maury, Jr., a notary public in and for the Dis-
71 trict aforesaid, do hereby certify that Adelaide J. Brown, Harrington Brown, and Minnie G. Brown, his wife, parties to a certain deed bearing date on the eleventh day of July, A. D. 1883, and hereto annexed, personally appeared before me, in the District aforesaid, the said Adelaide J. Brown, Harrington Brown, and Minnie G. Brown, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and said Minnie G. Brown, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this fourteenth day of July, A. D. 1883.

[NOTARIAL SEAL.] JNO. W. MAURY, JR.,
Notary Public, D. C.

72 Thomas B. Brown *et al.* to George W. Brown. } Recorded February 23d, 1884, 1 p. m., in Liber 1070, folio 427. Deed.

This indenture made this eighteenth day of July in the year of our Lord one thousand eight hundred and eighty-three between Thomas B. Brown and Nellie T. Brown his wife and William V. H. Brown, and Emma C. Brown his wife all of the county of Los Angeles of California of the first part and George W. Brown of the city of Washington, District of Columbia of the second part. Witnesseth that the said parties of the first part for and in consideration of the sum of five (5) dollars, current money of the United States, to them in hand paid by the said party of the second part the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged, have granted, bargained and sold, aliened, conveyed and confirmed and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm unto and
73 to the use of the said party of the second part his heirs and assigns, all those certain pieces or parcels of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished as original lots numbered nine (9) ten (10) eleven (11), twelve (12), thirteen (13) and fourteen (14) in square numbered two hundred and seventy-five (275) together with the rights, easements, privileges and appurtenances to the same belonging or in anywise thereto appertaining.

To have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said party of the second part his heirs and assigns. And the said parties of the first part for themselves, their heirs, executors and administrators do hereby covenant with said party of the second part his heirs and assigns, that the said hereinabove-described land and premises with the appurtenances unto said party of the second part, his heirs and assigns, from and against all persons claiming, by, through or under said parties
74 of the first part, or their heirs and assigns or any one of them the said parties of the first part, and their heirs shall and will forever warrant and defend by these presents; and further that any act or deed deemed by counsel learned in the law, requisite and necessary the more perfectly to assure unto said party of the second part his heirs and assigns, the said land and premises hereinabove granted, the said parties of the first part, and their heirs shall and will at all times at the cost of the person requesting the same, do, perform, execute and deliver.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

THOS. B. BROWN. [SEAL.]
NELLIE T. BROWN. [SEAL.]
WM. V. H. BROWN. [SEAL.]
EMMA L. BROWN. [SEAL.]

Signed, sealed and delivered in the presence of—

——— ———.
——— ———.

STATE OF CALIFORNIA, } *To wit:*
Los Angeles County, }

75 I, Wm. S. Waters, a notary public in and for the county aforesaid, do hereby certify that Thomas B. Brown and Nellie T. Brown, his wife, and William V. H. Brown and Emma C. Brown, his wife, parties to a certain deed bearing date on the eighteenth day of July, A. D. 1883, and hereto annexed, personally appeared before me, in the county aforesaid, the said Thomas B. Brown and Nellie T. Brown, his wife, and William V. H. Brown and Emma C., his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and said Nellie T. Brown and Emma C. Brown, being by me examined privily and apart from their husbands and having the deed aforesaid fully explained to them by me, acknowledged the same to be their act and deed, and declared that they had willingly signed, sealed, and delivered the same, and that they wished not to retract it. Given under my hand and official seal this 25th day of October, A. D. 1883.

[NOTARIAL SEAL.] WM. S. WATERS,
Notary Public.

76 STATE OF CALIFORNIA, } *ss:*
County of Los Angeles, }

I, A. W. Potts, county clerk and *ex officio* clerk of the superior court in and for said county (the same being a court of record, having a clerk and seal), do hereby certify that Wm. S. Waters, before whom the annexed certificate of acknowledgment was signed, was at the time of signing the same, to wit, on the 25th day of October, A. D. 1883, a notary public in and for said county, duly commissioned and sworn; that his signature to said certificate of acknowledgment is genuine, and that the annexed instrument is made, executed, acknowledged, and certified in accordance with the laws of the State of California.

In witness whereof I have hereunto signed my name and affixed the seal of said superior court, at office, this 26th day of Oct., 1883.

[COURT SEAL.] A. W. POTTS, *Clerk.*

77 To the admission of the records of said deeds and of each of them in evidence the defendants and each of the defendants, as the same were respect*fully* offered in evidence, objected to

the admission of the same in evidence because of a variance between the probater and the allegater, the declaration being brought against the defendants jointly, and alleging that they had jointly ejected the plaintiffs from the premises sued for and that they were jointly detaining the same from the plaintiffs, whilst the proof would show that one of the defendants alone was holding and detaining the same from the plaintiffs.

But the court overruled said objection and admitted said deeds in evidence against each and all of said defendants, and to said ruling the defendants and each of them then and there duly excepted, and said exception was noted on the minutes of the court at that time; and the defendants and each of them pray the court to sign and seal this their and each of their third bill of exceptions, which is accordingly done *nunc pro tunc* this 17th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

78 And thereupon the plaintiffs, to further maintain said issues on their part joined, offered the said Elizabeth B. Beale, wife of the plaintiff George N. Beale, as a witness on their behalf.

To the competency of said witness and to the admissibility of her testimony the defendants and each of the defendants at the time of such offer objected—

First. Because she was the wife of the plaintiff George N. Beale, and as such was incompetent to testify as a witness in the cause.

Secondly. Because should the plaintiffs succeed in their suit the plaintiff George N. Beale would recover an estate by the courtesy or an estate by the courtesy initiate, or at least a life estate in virtue of his marital rights with his coplaintiff, Elizabeth B. Beale, and the plaintiff Elizabeth B. Beale would not and could not herself recover such estate to which her husband was entitled, but
79 could only recover the reversionary interest or remainder after the expiration of his said estate, and therefore that even if the said witness Elizabeth B. Beale was competent at all or her testimony admissible at all she should only be held competent and her testimony should only be held admissible against the defendants or any of them to the extent of the said reversionary interest or remainder commencing at the expiration of her husband's said estate, and she should not be held competent as a witness and her testimony should not be admitted against the defendants or any of them to the extent of the said estate by the courtesy or estate by the courtesy initiate or life estate in virtue of his marital rights with his coplaintiff claimed by the said George N. Beale in the property sued for, and to the extent of his said interest or claim the said witness was incompetent and her said testimony was inadmissible and that she could not testify either for or against her hus-
80 band to the extent of his said interest or claim.

But the court overruled each of said objections and allowed her to testify and admitted her evidence, and she testified as follows:

I am one of the plaintiffs in this suit and the other plaintiff, George N. Beale, is my husband, to whom I was married on June

2d, 1851. I was born December 14, 1832; my mother's name was Mary B. Wheeler, *née* Brown. She was a sister to Thomas B. Brown and William V. H. Brown. She was born September 1, 1810, and was married to John H. Wheeler, my father, April 19, 1830, and she died intestate October 4, 1836, and my father died December 7, 1882. My uncle William V. H. Brown was born December 16, 1812, and died on the — day of July, 1862, intestate. My uncle Thomas B. Brown was born August the 14th, 1808, and he died at La Fayette, Tippecanoe county, in the State of Indiana, on the 21st day of September, 1838, intestate, unmarried and without issue or descendants. At my mother's death only myself and an infant child survived, and the said infant died a short time after my mother, so that
81 at the death of my uncle Thomas B. Brown my uncle William V. H. Brown and myself were his only heirs-at-law, each of us inheriting an equal undivided one-half of his estate. The property described in this suit was owned by my uncle Thomas at his death, but I never knew anything about my interest in it until I received a note from Mr. Garnett, dated March 21st, 1884, as follows:

"Henry Wise Garnett, attorney-at-law, No. 2, Columbian law building.

WASHINGTON, D. C., *Mar.* 21*st*, 1884.

Mrs. E. B. Beale, 2015 N St. N. W., city.

D'R MADAM: I will be much obliged if you will be kind enough to call at my office on a matter of business, and thus oblige,

Yours very truly,

HENRY WISE GARNETT."

I then called on the defendant George W. Brown, and he, without any explanation, referred me to his lawyer, Mr. Garnett. I
82 saw Mr. Garnett, and he informed me that I had no title to the property, but my signature was necessary to remove a cloud from the title. I asked him to advise me and — declined, and advised me to consult another lawyer. I then consulted Wm. B. Webb, and was advised by him to accept the $100.00 offered for my signature; this I declined to do. I then consulted Mr. Davidge, and the result is that I am here.

On cross-examination Mrs. BEALE testified further as follows: I told you, Mr. Garnett, that my signature was not for sale; that if I had no title to the property or right to it you were welcome to my signature to correct any defect, but that if I had a title I would look into the matter and see what the property was worth. I do not know that Mr. Webb had the papers. I declined the offer of $100.00. There is a vast difference between "my signature" and "my interest." I did not authorize Mr. Webb to find out what more the defendants would offer.

And on re-examination Mrs. BEALE further testified as fol-
83 lows: I received a second letter from Mr. Garnett, dated March 27th, 1884, as follows:

"Henry Wise Garnett, attorney-at-law, No. 2, Columbian law building.

WASHINGTON, D. C., *Mar. 27th*, 1884.

Mrs. Elizabeth B. Beale, 2015 N St. N. W., city.

DEAR MADAM: I have just seen Mr. W. B. Webb, who informs me that you decline the offer made, but state that you are ready to receive any further offers. I understand, therefore, that you desire a higher price.

I requested Mr. Webb to ask you to name the amount you would be willing to accept and deed whatever claim you may suppose you possess. This he informs me you have not done. I shall be pleased to receive through him your views on this point. As you have no rights that can be legally enforced and as the offer made was
84 a most liberal one, I cannot advise my client to make any advance. The next proposition must come from you. I must ask, however, that it be made promptly, as I shall advise, unless the matter is shortly settled, that no further attention be paid to your supposed interest.

I am, with much respect, your obedient servant,

HENRY WISE GARNETT."

And to the ruling of the court and to the admission of said evidence the defendants and each of them then and there duly excepted and said exceptions were noted on the minutes of the court at that time, and the defendants and each of them pray the court to sign and seal this their and each of their fourth bills of exceptions, which is accordingly done *nunc pro tunc* this 18th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

85 And thereupon the plaintiff-, without giving any other or further testimony than is above set forth, rested.

Whereupon the defendants and each of the defendants made a motion in the nature of a demurrer to the evidence.

But the court overruled the same; to which ruling of the court the defendants and each of them then and there duly excepted and said exception was noted on the minutes of the court at that time, and the defendants and each of them pray the court to sign and seal this their fifth bill of exceptions, which is accordingly done *nunc pro tunc* this 18th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

86 And thereupon the defense offered in evidence the record of the tax deed from the corporation of Washington to O. B. Brown, bearing date on November 23rd, 1846, and recorded December 12th, 1846, in Liber W. B. 130, folio 111, as recorded in said liber among the land records of the District of Columbia, the said record of said deed being in the words and figures following, to wit:

Corporation of Wash'n to Obadiah B. Brown. } Deed. Recorded Dec. 12th, 1846, W. B. 130, folio 111.

This indenture, made this twenty-third day of Nov. in the year of our Lord one thousand eight hundred and forty-six, between the mayor, board of aldermen and board of common council of the city of Washington of the first part, and O. B. Brown of the same place of the second part. Whereas the said corporation, by virtue of the powers in them vested by their charter, have from
87 time to time, laid and imposed certain annual taxes, on all the real and personal assessable property within the said city agreeably to the several assessments thereof, and have, by sundry acts providing for the collection of such taxes enacted that whenever two or more years' taxes on real property, whether improved or unimproved in the city of Washington, shall remain due and unpaid; or whenever any special tax, or any real property shall remain unpaid for two or more years after the same shall have become due it shall be the duty of the collector in whose hands such taxes may be placed for collection to sell such real property, or so much thereof, not less than a lot (when the property on which the tax has accrued is not less than that quantity) as may be necessary to pay any such taxes, with all legal costs and charges thereon, at public sale to satisfy the said corporation therefor. Subject however to the terms, conditions, provisions and restrictions as are in the said acts mentioned, first giving such notice of the time and place
88 for the sale as said acts require.

And whereas lots numbered nine, ten, eleven, twelve, thirteen and fourteen in square numbered two hundred and seventy-five lying and being within the said city, became chargeable as the property, and in the name of Thomas B. Brown with the following taxes; that is to say, for the years 1834—1835—1836—1837—1838—1839—1840 and 1841, the sum of six dollars and seventy cents—and whereas, the property before described having become liable to be sold under the act in part above quoted Andrew Rothwell the collector in whose hands the said taxes were placed for collection, failing to collect them in any other way, after having previously given public notice for the sale, by advertisement thereof, twelve successive weeks, next before the day of sale, in the National Intelligencer, a newspaper printed in the city of Washington, therein describing as above the said property, to whom assessed at the time of such advertisement, the said amount of taxes due, and the years for which the same were due, did offer for sale at public
89 auction on the tenth day of December A. D. eighteen hundred and forty-two all of said lots to pay the said taxes and the expenses attending the sale when the said O. B. Brown being the highest bidder became the purchaser thereof for the sum of fourteen dollars and eighty-nine cents—and then paid to the said collector the taxes aforesaid and the expenses attending said sale amounting to the sum of fourteen dollars and eighty-nine cents. And more than two years having elapsed since the day of said sale,

and the said property not having been redeemed as by law provided, the said party of the second part has become entitled to a conveyance thereof.

Now therefore this indenture witnesseth, that the said mayor, board of aldermen and board of common council parties of the first part, in consideration of the premises and of the sum of one dollar, current money to them in hand paid by the said party of the second part at or before the sealing and delivery of these presents,
90 the receipt of which is hereby acknowledged, have granted bargained and sold and by these presents do grant bargain and sell, unto the said party of the second part his heirs and assigns forever, all the said hereinbefore-described lots numbered nine, ten, eleven, twelve, thirteen and fourteen in square numbered two hundred and seventy-five—with the appurtenances.

To have and to hold the said premises with the appurtenances unto the said party of the second part his heirs and assigns forever to his and their use.

In testimony whereof, the mayor of the said city hath hereunto set his hand and caused the seal of the said corporation to be affixed on the day and year first above written.

Attest: W. W. SEATON, *Mayor.* [SEAL.]

C. A. WILTBERGER, *Register.*

91 DISTRICT OF COLUMBIA, } *sct:*
Washington County, }

Be it remembered that on this twenty-third day of November, in the year of our Lord one thousand eight hundred and forty-six, before the subscribers, two justices of the peace in and for the county of Washington, personally appears W. W. Seaton, Esq., mayor of the city of Washington, and acknowledges the foregoing indenture or instrument of writing to be the act and deed of the mayor, board of aldermen, and board of common council of the city of Washington, delivered for the use and purposes therein expressed.

H. NAYLOR, *J. P.*
C. H. WILTBERGER, *J. P.*

To the admission of the record of said deed the plaintiffs objected and the court sustained said objection and excluded said evidence; to which ruling of the court the defendants and each of them
92 then and there duly excepted, and said exception was noted on the minutes of the court at that time, and the defendants and each of them pray the court to sign and seal this their and each of their sixth bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

And the defense then offered in evidence all the acts of Congress applicable to and governing the matters in controversy, and also offered in evidence all the corporate laws or ordinances of the city

of Washington applicable to and governing the matters in controversy; also offered in evidence the official general assessment books of said corporation kept by and produced by the proper official custodian of said books, which had been kept in and were produced from the proper depository for the same, covering the period in controversy; and also offered in evidence the said corporation's official
93 books of assessment of real and personal property (kept and produced as aforesaid), commonly called tax books, covering the same period; and also offered in evidence the edition of the Daily National Intelligencer (a morning newspaper published in the city of Washington, in said District) containing the advertisement by assessors covering said period.

And thereupon the defence further offered in evidence the edition of the said Daily National Intelligencer, published on Saturday, September 17th, 1842, containing an advertisement and notice by the collector of said city in the words and figures following, to wit:

COLLECTOR'S OFFICE, CITY HALL, *September* 15, 1842.

On Saturday, the 10th day of December next, the annexed list of property will be sold by public auction, at the City hall, in the city of Washington, to satisfy the corporation of the said city for taxes due thereon for the years stated, unless the said taxes be previously paid to the collector, with such expenses and fees as may have accrued at the time of payment.

Sale to commence at 11 o'clock. Terms cash.

A. ROTHWELL, *Collector.*

sept17—wts

To whom assessed.	No. of square.	No. of lot.	Years for which taxes are due. 1837.	1838.	1839.	1840.	1841.	Amount due on each lot.	Total amount in each person's name.
Almand, Albert	218	15	.....	.....	$1 36	$1 36	$1 36	$4 08	
Ditto	455	18	.....	.....	6 42	6 42	6 42	19 26	$23 34
Areihle, J. B	107	5	.....	.....	1 77	1 77	1 77	.....	5 31
Adams, George R.	536	sub. 34	.....	18	18	18	18	.....	2 17
Tax for removing nuisance	.....	.....	.....	$1 45	.....	.....	.....	.....	
Ault, Henry, heirs of.	292	pt. 4 & imp.	.....	.....	.....	20 05	20 05	40 10	
Beginning for the same at a point in the line of Pennsylvania avenue 36 ft. 3 in. distant from the northwest corner of said square, and running thence southwardly in a perpendicular line with the line of said avenue 42 ft. 11 in.; thence running 99 ft. 4 in. to D street, with a line drawn perpendicular to the line of said street; then with the line of said street due east 20 feet; thence due north in a line parallel to the second line 85 ft.; thence in a line perpendicular to the line of said avenue 49 ft. 7 in. to said avenue; thence with the line of said avenue westwardly 23 ft. 7 in. to the beginning.									
Ditto	324	1 & imp.	.....	.....	.....	12 01	12 01	24 02	
Ditto	387	27 & imp.	.....	.....	.....	10 35	10 35	20 70	
Ditto	.....	33 & imp.	.....	.....	.....	5 10	5 10	10 20	
Ditto	.....	40	.....	.....	.....	1 35	1 35	2 70	
Ditto	.....	54	.....	.....	.....	81	81	1 62	99 34
Ditto	69	17	22	22	22	22	22	.....	1 10
Adams, George	428	6 & imp.	.....	.....	4 47	4 47	7 47	16 41	
Adams, William	.....	pt. 7	.....	.....	3 93	3 93	3 93	11 79	
Ditto	.....	8 & imp.	.....	.....	20 06	27 69	27 69	.....	
Ditto	37	22	.....	.....	.....	25 15	.....	97 59	125 79
Paving tax, on interest from 1st August, 1841	.....	.....	.....	.....	51	51	54	.....	1 53
Boone, Arnold	60	7	36	36	18	18	18	.....	1 90
Brent, Daniel (for E. Carroll). (For 1836, 36 cents)	726	part	72	72	1 08	1 08	1 08	.....	5 40
Bliss, Elam. (For 1836, 72 cents)									
Beginning on Maryland avenue 100 feet from southeast corner of said square and bounding on said avenue westwardly 25 ft., then running at right angles with said avenue 43 ft. 4 in.; then running at right angles with B street 60 ft. to said street; then bounding on said street east 25 ft. to a lot formerly owned by General Bailey, on which there is a two-story house.	759	7	.....	.....	.....	55	55	.....	1 10
Bestor, George C.	38	13	.....	.....	77	77	77	.....	2 31
Berry, Mildred									

Barry, Robert. (For 1836, 22 cents)	708	9	22	22	22	22	22	1 32	
Ditto. (For 1836, 19 cents)	E of 708	6	19	19	18	18	18	1 11	2 43
Bickley, Robert S	12	5				2 11	2 11		4 22
Brett, Robert R	1020	6		22	22	22	22	88	
Ditto		7		21	21	21	21	84	1 72
Bulfinch, Thomas	268	pt. 4		5 37	3 74	3 74	3 74	16 59	
Being the east part, fronting 51 ft. 6 in. on Maryland avenue by the depth of the lot.									
Ditto	388	p. 20, 21, 22		1 75	2 25	2 25	2 25	8 50	25 09
Beginning at the northwest corner of the square and running south 75 feet, thence east 78 feet, north 75 feet, west 78 feet to the beginning.									
Bryden, William	862	all				4 51	4 51		5 02
Bell, Charles	377	pt. 15 & im.	8 61	6 85	6 47	6 47	6 47		34 87
Being the south end of the lot fronting on the alley and containing 2,583 square feet.									
Boteler, Chas. W	566	20		61	1 04	1 04	1 04		3 73
Barry, David	660	4	36	36	36	36	36		1 80
Baldwin, Elizabeth	923	15 & imp.		91	3 17	3 17	3 17	10 42	
Ditto		16		14	14	14	14	56	
Ditto		17		16	16	16	16	74	
Ditto		18		22	22	22	22	88	
Ditto	943	1			7	7	7	21	
Ditto		2			8	8	8	24	
Ditto		6			9	9	9	27	
Ditto		7			15	15	15	45	
Ditto		8			9	9	9	27	14 04
Butler, James	216	sub. & imp.		3 00	3 01	3 01	3 01	12 03	
Ditto		4 & imp.			1 51	1 51	1 51	4 53	16 56
Brent, James F, and others	349	pt. 3 of sub.	& imp.		2 47	2 47	2 47	11 16	
Beginning on C street 60 feet from the southeast corner of the square, running west 12 feet, north 60 feet, east 12 feet, south to the beginning.									
Pump tax				3 75					
Ditto	516	18			96	96	96	2 88	14 04
Burke, Mary P., and Susanna D. Anderson	254	17 & imp.			28 87	28 87	28 87		86 61
Briscoe, Richard G	A	E. ½ 11, imp.			26 99	30 74	30 74		
Water tax					6 02				
Alley tax, on int. from 7th Nov., 1840					26 03				120 52
Berry, Rhoda L	729	pt. 6 & imp.			2 40	7 65	7 65		17 70
Being the west part, fronting 22 feet on A street by the depth of the lot.									
Brown, Thomas B	275	9	11	11	12	12	12	1 01	
For 1834, 16 cents; 1835, 16 cents; 1836, 11 cents.									
For 1834, 19 cents; 1835, 19 cents; 1836, 13 cents		10	13	13	13	13	13	1 16	
For 1834, 17 cents; 1835, 17 cents; 1836, 12 cents		11	12	12	13	13	13	93	
For 1834, 19 cents; 1835, 19 cents; 1836, 13 cents		12	13	13	14	14	14	1 19	
For 1834, 17 cents; 1835, 17 cents; 1836, 12 cents		13	12	12	13	13	13	93	
For 1834, 19 cents; 1835, 19 cents; 1836, 13 cents		14	13	13	13	13	13	1 16	
Ditto	950	26		45	62	62	62	2 31	8 69
Bank of the United States	385	pt. 3				1 41	1 41	2 82	
Being the east part, fronting 24 feet on Maryland avenue and extending through to C street.									
Ditto		7				2 38	2 38	4 76	7 58
Billing, W. W., and others, trustees	288	pt. 20	78	78	1 82	1 82	1 82		
Paving tax, on interest from March 1, 1840					22 65				29 67
Being the north part of the lot, fronting 50 feet on 12th street.									

95 And also offered in evidence the editions of said newspaper published on—

Saturday, September 24th, 1842;
Saturday, October 1st, 1842;
Saturday, October 8th, 1842;
Saturday, October 15th, 1842;
Saturday, October 22d, 1842;
Saturday, October 29th, 1842;
Saturday, November 5th, 1842;
Saturday, November 12th, 1842;
Saturday, November 19th, 1842;
Saturday, November 26th, 1842, and
Saturday, December 10th, 1842;

each and all containing the said advertisement and notice last above mentioned.

To the admissibility of the said offered evidence the plaintiffs objected because the said advertisements and evidence were insufficient in law, and the court sustained said objection and excluded said evidence; to which ruling the defendants and each of the defendants then and there duly excepted, and said exception was noted on the minutes of the court at that time; and the de-

96 fendants and each of them pray the court to sign and seal this their seventh bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1887.

W. S. COX, *J.* [SEAL.]

And thereupon the defence again offered in evidence the record of said tax deed from the corporation of Washington to O. B. Brown, dated on November 23d, 1846, and recorded on December 12th, 1846, in Liber W. B. 130, folio 111, conveying the property in controversy, as the same is recorded in said liber among the land records of the District of Columbia, the same being in the words and figures before mentioned.

To the admission of said record of said deed the plaintiff still objected, and the court sustained said objection and excluded said deed; to which ruling of the court the defendants and each

97 of them then and there duly excepted, and said exception was noted on the minutes of the court at that time; and the defendants and each of them pray the court to sign and seal this their and each of their eighth bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

And thereupon the defence offered in evidence the record of a deed from said O. B. Brown to William V. H. Brown, dated on May 30th, 1848, and recorded on the same day in Liber W. B. 143, folio 352, conveying the property in controversy, as the same is recorded in said liber among the land records of the District of Columbia, the same being in the words and figures following, to wit:

98 O. B. Brown to W. V. H. Brown. } Deed. Recorded 30th May, 1848, W. B. 143, folio 352.

This indenture made this thirteenth day of May in the year of our Lord, one thousand eight hundred and forty-eight, between O. B. Brown, of the city of Washington and District of Columbia, of the first part, and William V. H. Brown, of the same place, of the second part, witnesseth: That the said O. B. Brown, party of the first part, for and in consideration of the sum of one dollar current money to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents the receipt of which is hereby acknowledged hath given, granted, bargained, sold, enfeoffed, conveyed and confirmed and by these presents doth give, grant bargain, sell, enfeoff, convey and confirm unto the said party of the second part, his heirs and assigns, six certain lots of land known and designated as lots numbered nine, ten, eleven,
99 twelve, thirteen and fourteen in square numbered two hundred and seventy-five, lying and being in the aforesaid city of Washington: To have and to hold the said premises herein conveyed together with all the rights, immunities, privileges and appurtenances thereunto belonging unto the said party of the second part, his heirs and assigns forever, and the said party of the first part doth moreover covenant and agree with the said party of the second part his heirs and assigns that the said premises herein conveyed or intended to be conveyed, against all claims of him the said O. B. Brown his, heirs executors, administrators, and all persons claiming under him, them or any of them he will forever warrant and defend. In testimony whereof the said O. B. Brown hath hereunto set his hand and seal, on the day and year first above written.

O. B. BROWN. [SEAL.]

Signed, & sealed in the presence of us—

H. NAYLOR.
C. H. WILTBERGER.

100 DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

We, Henry Naylor and Charles H. Wiltberger, justices of the peace in and for the said county and District, do hereby certify that Obadiah B. Brown, party grantor to a certain deed bearing date on the 30th day of May, 1848, and hereto annexed, personally appeared before us in our county aforesaid, the said Obadiah B. Brown being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this thirteenth day of May, in the year eighteen hundred and forty-eight.

H. NAYLOR, *J. P.* [SEAL.]
C. H. WILTBERGER, *J. P.* [SEAL.]

101 To the admission of said record of said deed the plaintiffs objected, and the court sustained said objection and excluded said deed.

To which ruling of the court the defendants and each of them then and there duly excepted, and said exception was noted on the minutes of the court at that time; and the defendants and each of them pray the court to sign and seal this their and each of their ninth bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

102 And thereupon, on behalf of the defense, Edmund Cammack and John Cammack were called and duly sworn as witnesses and testified that from January, 1842, to January, 1849, they knew and were familiar with the condition of the whole square No. 275, in the city of Washington, in the District of Columbia, and that during said period the whole of it was vacant and unoccupied and was merely a part of the open commons, and that it was then in the "slashes," being a marshy part of the said commons; that during no part of said period was there ever any house or building upon said square or any part thereof, nor was such square or any part thereof enclosed or fenced or in the actual occupancy of any person during any portion of said period.

And said testimony having been admitted, the defendant George W. Brown took the witness stand and was sworn as a witness, and the defendant's counsel offered to prove in defense by said witness

103 that he did not nor did the other defendants claim the property in controversy under any common ancestor with the plaintiffs or either of them, nor under the said Thomas Peter, Richard Smith, and Thomas B. Brown, the grantors and grantee in the said deeds recorded in Libers W. B. 28, folio 181; W. B. 31, folio 139, and W. B. 45, folio 133, respectively, or under any of them, the said parties; but that, on the contrary, he claimed said property, and his brothers, William V. H. Brown, Thomas B. Brown, and Harrington Brown, his codefendants, had claimed said property, exclusively under said tax title mentioned in the aforegoing bills of exceptions, as a paramount and superior title to that of the said parties in deeds last above mentioned or referred to; and, further, that the statements made by him in the said equity cause No. 8974 were made under a misapprehension of fact; that at the time of making said statements in the bill in said cause contained he supposed *that* his father, William V. H. Brown, to have claimed under a common

104 ancestor with said Elizabeth B. Beale, and that therefore the possession of his father and those claiming under his father (including himself) was, constructively, her possession of the property in controversy; but that he (the witness) had since learned that his father, William V. H. Brown, had never nor had those claiming under the said William V. H. Brown (including the witness himself) ever been claiming under such common ancestor with said Elizabeth B. Beale, and that the witness, since making said statements in said bill contained, having discovered that they were erro-

neous, had repudiated them and now repudiates them as erroneous; and that he did not claim title to the property in controversy under but in opposition to the title of Thomas Peter, Richard Smith, and Thomas B. Brown, grantors and grantee in said deeds, and under said tax title as a paramount and superior title. To this testimony the plaintiffs objected, and the court sustained said objection and excluded said testimony for the reason, as then and there announced, that it was only incumbent on the plaintiff- to show
105 that a common ancestor of the plaintiff Elizabeth B. Beale and the defendants had title to the land in question, and that upon his death the same descended to the plaintiff and to the defendant's father, the said William V. H. Brown, and his heirs-at-law, and that, testimony having been introduced tending to prove that such was the case, it was incumbent on the defendants to show a different holding in order to defeat the plaintiff's right to recover; and to said ruling of the court the defendants and each of them then and there duly excepted, and said exception was noted on the minutes of the court at that time; and the defendants and each of them pray the court to sign and seal this their and each of their 10th bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of July, A. D. 1888.

W. S. COX, *J.* [SEAL.]

106 And thereupon the defence offered to prove by the said defendant, George W. Brown, that the said William V. H. Brown, last above mentioned, died intestate about August —, 1862, leaving surviving him five children as his only heirs-at-law,
107 namely, Thomas B. Brown, William V. H. Brown, George W. Brown, Harrington Brown, and Owin or Orwin Brown, and that the said Owin or Orwin Brown afterwards died intestate, unmarried, and without issue, leaving his other brothers above mentioned surviving him as his only heirs-at-law.

To which evidence the plaintiffs objected, and the court sustained said objection and excluded said evidence because the same was immaterial in consequence of the failure to prove title under the tax deed given in evidence; to which ruling of the court the defendants and each of them then and there duly excepted, and said exception was noted on the minutes of the court at that time; and the defendants and each of them pray the court to sign and seal this their and and each of their eleventh bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

108 And thereupon the defence offered to prove by the said defendant, George W. Brown, that from and after the said tax deed the property in controversy stood on the tax books in the name of the said tax-sale purchaser and those claiming, and that he and they had paid all the taxes upon the property in controversy; and the defence further offered to prove by said witness that the plaintiffs, though claiming and demanding one equal undivided moiety of said property, had not nor had either of them ever offered to

pay their full share of said taxes so paid, but, on the contrary, had always refused so to do, and that the defendants had placed a fence around the land in controversy in 1880 or 1881. To the admissibility of said offered testimony and evidence the plaintiffs objected, and the court sustained said objection and excluded said testimony and evidence; to which ruling of the court the defendants
109 and each of them then and there duly excepted, and said exception was noted on the minutes of the court at that time; and the defendants and each of them pray the court to sign and seal this their and each of their twelfth bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

And thereupon the defence offered to prove by said witness that the amount in controversy was over $5,000.00 and was more than the jurisdictional amount necessary to take the case up to the Supreme Court of the United States upon writ of error, and the plaintiffs admitted that such was the case; whereupon the defence have no further evidence to offer save what they have already offered.

110 And thereupon the plaintiffs said that they would not further prosecute their suit against the defendants William V.
111 H. Brown, Thomas B. Brown, and Harrington Brown, and asked the court to enter a discontinuance of the suit against said defendants.

To which the defendants and each of them objected because they were sued jointly and the allegations contained in the declaration were made against them jointly, and without amending their declaration the plaintiffs could not recover the entire interest in the property as claimed in the declaration from a single defendant on such joint allegations, but the court overruled said objection and allowed the plaintiffs to discontinue as above, and to said rulings of the court the defendants and each of the defendants then and there duly excepted, and said exception was noted on the minutes of the court at that time, and the defendants and each of them pray the court to sign and seal this their and each of their thirteenth bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

112 Thereupon the plaintiffs prayed the court to instruct the jury as follows, namely:

"If the jury believe the evidence they will find a verdict for the plaintiffs, as claimed in the declaration in this suit, against the defendant George W. Brown;" to which prayer the defence objected, but the court overruled said objections and granted the plaintiffs' said prayer and gave the jury the said instructions as prayed; to which rulings of the court the defendants and each of them then and there duly excepted, and said exception was noted upon the minutes of the court at that time, and the defendants and each of

them pray the court to sign and seal this their and each of their fourteenth bill of exceptions, which is accordingly done *nunc pro tunc* this 20th day of January, A. D. 1888.

W. S. COX, *J.* [SEAL.]

113 *Proceedings in Gen'l Term.*

MONDAY, *October* 1, 1888.

Proceedings before the supreme court of the District of Columbia, sitting in general term, beginning first Monday, October 1, 1888.

Present, presiding: Mr. Chief Justice E. F. Bingham and Justices Cox, James, Hagner, and Merrick.

* * * * * * *

WEDNESDAY, *October* 31, 1888.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justices James & Merrick.

GEORGE N. and ELIZABETH B. BEALE, Plaintiffs, *vs.* GEORGE W. BROWN and Others, Defendants. } At Law. No. 25218, Cal. 36.

Argued by Mr. Barnard, for the plaintiffs, and he is answered by Mr. Robinson, for the defendants, and the case is submitted to the court.

114 MONDAY, *November* 5, 1888.

Session resumed pursuant to adjournment.
Present: Mr. Chief Justice E. F. Bingham & Justices James & Merrick.

* * * * * * *

GEORGE N. and E. B. BEALE *vs.* GEORGE W. BROWN. } 25218. Law. Cal. 36.

Opinion by Mr. Justice Merrick, affirming action of special term overruling exceptions. Wife a material party; has right to testify.

TUESDAY, *Nov.* 6, 1888.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham & Justices James & Merrick.

* * * * * * *

115 GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife, *vs.* GEORGE W. BROWN. } No. 25218. Law.

This cause, coming on for hearing on the defendants' bills of exceptions, being heard, argued, and submitted, it is this 6th day of

November, 1888, adjudged and ordered that there is no error in the rulings and judgment of the circuit court herein, and the said judgment is hereby in all things affirmed, and that the defendant George W. Brown and James E. Fitch, surety in his undertaking for the appeal herein, pay the costs of this appeal.

E F. BINGHAM,
Chief Justice.

Allowance for Writ of Error. Filed Nov. 8. 1888.

In the Supreme Court of the District of Columbia, Holding a General Term.

116 GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife, Plaintiffs, *vs.* GEORGE W. BROWN *et al.*, Defendants. } At Law. No. 25218.

Now come the defendants and each of them and pray for a writ of error to the Supreme Court of the United States from the judgment and decision made and entered in this cause on the sixth day of November, A. D. 1888, by the supreme court of the District of Columbia and ask the court to fix the amount of the bond necessary to supersede said judgment and decision; which said writ of error is this 8th day of November, A. D. 1888, by the court hereby allowed, and the court fixes the amount of the penalty of the bond necessary to supersede said judgment and decision at three thousand dollars.

By the court:

E. F. BINGHAM,
Chief Justice.

117 *Appeal Bond to S. C. U. S. Filed Nov.* 9, 1888.

In the Supreme Court of the District of Columbia, the 9th Day of November, A. D. 1888.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife, Plaintiff-, *vs.* GEORGE W. BROWN *et al.*, Defendants. } At Law. No. 25218. In Error.

Know all men by these presents that we, George W. Brown and James E. Fitch, are bound unto the above-named George N. Beale and Elizabeth B. Beale, his wife, in the sum of three thousand dollars ($3,000.00), to be paid to the said George N. Beale and Elizabeth B. Beale, his wife, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 9th day of November, A. D. 1888.

Whereas the above-named George W. Brown hath prosecuted a

writ of error to remove the above-entitled cause from the
118 supreme court of the District of Columbia to the Supreme Court of the United States and to reverse the judgment and decision rendered in the above suit by the supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named George W. Brown shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEORGE W. BROWN. [SEAL.]
JAMES E. FITCH. [SEAL.]

Sealed and delivered in presence of—
WM. A. JOHNSON.

Surety satisfactory.

EDWARDS & BARNARD,
Att'ys for Pl'ff.

Approved.

E. F. BINGHAM,
Chief Justice.

Bond for Writ of Error. Filed Dec. 10, 1888.

In the Supreme Court of the District of Columbia.

GEORGE N. BEALE and ELIZABETH B. BEALE, His Wife, Plaintiffs,	No. 25218.
vs.	At Law.
GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, & HARRINGTON BROWN, Defendants.	In Error.

119 Know all men by these presents that we, William V. H. Brown, Thomas B. Brown, Harrington Brown, and James E. Fitch, are bound unto the above-named George N. Beale and Elizabeth B. Beale, his wife, in the sum of three thousand dollars ($3,000.00), to be paid to the said George N. Beale and Elizabeth B. Beale, his wife, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 9th day of November, A. D. 1888.

Whereas the above-named William V. H. Brown, Thomas B. Brown, and Harrington Brown hath prosecuted a writ of error to remove the above-entitled cause from the supreme court of the District of Columbia to the Supreme Court of the United States and to reverse the judgment and decision rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the
120 above-named William V. H. Brown, Thomas B. Brown, and Harrington Brown shall prosecute their said writ of error to

effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WILLIAM V. H. BROWN. [SEAL.]
THOMAS B. BROWN. [SEAL.]
HARRINGTON BROWN. [SEAL.]

Satisfactory.
EDWARDS & BARNARD, *Att'ys.*

Sealed and delivered in presence of—
MAYE WICKS.
A. V. TRUDEL.
C. W. CLINE.

JAMES E. FITCH. [SEAL.]

Sealed and delivered in presence of the undersigned as to James E. Fitch.
WM. F. SHUTE.

Approved.

E. F. BINGHAM,
Chief Justice.

121 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between George N. Beale and Elizabeth B. Beale, plaintiffs, and George W. Brown, William V. H. Brown, Thomas B. Brown, and Harrington Brown, defendants, being No. 25218, at law, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of December, in the year of our Lord 1888, and of the Independence of the United States the one hundred and thirteenth.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *To wit:*

To George N. Beale and Elizabeth B. Beale:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein George W. Brown, William V. H. Brown, Thomas B. Brown, and Harrington Brown are plaintiffs and you are defendants, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness E. F. Bingham, chief justice of the said supreme court of the District of Columbia.

E. F. BINGHAM,
Chief Justice.

Service accepted Dec. 11, 1888.

EDWARDS & BARNARD,
Att'ys for Def'ts in Error.

122 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 9th day of March, 1889.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By J. R. YOUNG,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 9th day of March, 1889.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, Return J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing

certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 9th day of March, 1889.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: Case No. 13,637. District of Columbia supreme court. No. 418. George W. Brown, William V. H. Brown, Thomas B. Brown, and Harrington Brown, plaintiffs in error, *vs.* George N. Beale and Elizabeth B. Beale. Filed September 17, 1889.

DEC 2 1892
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 90.

GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, AND HARRINGTON BROWN, PLAINTIFFS IN ERROR,

vs.

GEORGE N. BEALE AND ELIZABETH B. BEALE, DEFENDANTS IN ERROR.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

HENRY WISE GARNETT and
CONWAY ROBINSON, JR.,
Attorneys for Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 9th day of March, 1889.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: Case No. 13,637. District of Columbia supreme court. No. 418. George W. Brown, William V. H. Brown, Thomas B. Brown, and Harrington Brown, plaintiffs in error, *vs.* George N. Beale and Elizabeth B. Beale. Filed September 17, 1889.

149 U S 766

Office Supreme Court U. S.
FILED.
DEC 2 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

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GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, AND HARRINGTON BROWN, PLAINTIFFS IN ERROR,

vs.

GEORGE N. BEALE AND ELIZABETH B. BEALE, DEFENDANTS IN ERROR.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

HENRY WISE GARNETT and
CONWAY ROBINSON, Jr.,
Attorneys for Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 90.

GEORGE W. BROWN, WILLIAM V. H. BROWN, THOMAS B. BROWN, AND HARRINGTON BROWN, PLAINTIFFS IN ERROR,

vs.

GEORGE N. BEALE AND ELIZABETH B. BEALE, DEFENDANTS IN ERROR.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

This is an action of ejectment brought by the defendants in error, George N. Beale and Elizabeth B. Beale, who are *husband* and *wife*, against the plaintiffs in error for an undivided moiety of certain real estate in the declaration mentioned and described, which they claim descended to the wife prior to the married woman's act. The defendants in error in the first count of the declaration allege that they are *husband* and *wife* and sue for said undivided moiety, in which they allege that said Elizabeth B. Beale claims the fee simple and her husband, the said George N. Beale, claims *a life estate in virtue of his marital rights*, and *of which they allege*

they were possessed on May 1, 1881, *when* they allege the plaintiffs in error *entered and ejected them;* and in the second count of the declaration the defendants in error also allege that they are *husband* and *wife* and sue for said undivided moiety, in which they claim the *fee simple*, of which they allege *they* were *possessed* on May 1, 1881, *when* they allege the plaintiffs in error *entered and ejected them.*

That is to say, in each count they sue for and claim a *particular estate* as belonging to the *husband* and a *remainder* or *reversion* as belonging to the *wife*, of which they allege that they were ousted during coverture. (Rec., p. 1.)

The plaintiffs in error demurred to the declaration (Rec., p. 2). There was a joinder in demurrer, and the demurrer was overruled by the court (Rec., p. 4), and when judgment was subsequently entered (Rec., p. 6) an appeal was taken from such judgment to the general term. (Rec., p. 7.)

The plaintiffs in error pleaded not guilty (Rec., p. 5), issue was joined on said plea (Rec., p. 5), and a jury trial, verdict, and judgment in favor of the defendants in error followed. (Rec., p. 6.)

The plaintiffs in error filed a motion for a new trial (Rec., p. 7), which was overruled by the trial court, and an appeal from the overruling of said motion was taken to the court in general term. (Rec., p. 8.)

An appeal was also taken from the judgment itself to the court in general term (Rec., p. 7). At the trial certain deeds recorded in Libers W. B. 28, fol. 181; W. B. 31, fol. 139; W. B. 45, fol. 133, were, on behalf of the defendants in error offered and admitted in evidence. The plaintiffs in error at the time objected and excepted, and said rulings of the trial court were carried to the general term for review by the 1st bill of exceptions of the plaintiffs in error, as therein appears (Rec., pp. 9 to 18). At the trial a bill in equity in another case was on behalf of the defendants in error offered and admitted in evidence as containing certain admissions by the said George W. Brown. The plaintiffs in error at the

time objected and excepted, and said rulings of the trial court were carried to the general term for review by the 2nd bill of exceptions of the plaintiffs in error, as therein appears (Rec., pp. 19 to 24). At the trial certain deeds recorded in Liber 1070, fol. 426, and Liber 1070, fol. 427, were on behalf of the defendants in error offered and admitted in evidence. The plaintiffs in error at the time objected and excepted, and said rulings of the trial court were carried to the general term for review by the 3rd bill of exceptions of the plaintiffs in error, as therein appears (Rec., pp. 24 to 28). At the trial the *defendants* in error, to further maintain said *issues* on *their* part joined, offered the said Elizabeth B. Beale, *wife* of said George N. Beale, as a witness on *their* behalf.

The plaintiffs in error and each of them objected and excepted to the competency of said witness and to the admissibility of her testimony because of her being the *wife* of said George N. Beale, first, to testify at all in the case; secondly, in case she could testify on her own behalf, to her competency and to the admissibility of her testimony for or on behalf of her husband, George N. Beale, or as to his interest or estate, or to prove the same (the objections being fully stated on page 28 of the record); but the trial court overruled *each* of said objections and allowed her to testify and admitted her evidence, which is stated on pages 28 to 30 of the record, and which went to prove her husband's *particular estate*. Said rulings of the trial court upon these points were carried to the general term for review by the 4th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., pp. 28 to 30.)

At the trial, when the defendants in error had finished their proof and closed their case and had rested, the plaintiffs in error and each of them made a motion in the nature of a demurrer to the evidence—that is to say, a motion to the court to instruct the jury that upon the evidence the plaintiffs could not recover—but the trial court overruled the

same, and said rulings of the trial court were carried to the general term for review by the fifth bill of exceptions of the plaintiffs in error, as therein appears. (Rec., p. 30.)

At the trial the record of a certain tax deed, dated November 23, 1846, and recorded on December 12, 1846, in Liber W. B. 130, fol. 111, was on behalf of the plaintiffs in error offered in evidence and excluded by the trial court on the objection of the defendants in error, and later on was again offered, objected to, and excluded by the trial court, and said rulings of the trial court were carried to the general term for review by the 6th and 8th bills of exceptions of the plaintiffs in error, as therein appears. (Rec., pp. 30 to 32, and Rec., p. 36.)

At the trial certain advertisements of a tax sale on December 10, 1842, and proofs leading up to the same were on behalf of the plaintiffs in error offered in evidence and excluded by the trial court on the objection of the defendants in error, and said rulings of the trial court were carried to the general term for review by the 7th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., pp. 32 to 36.)

At the trial the record of a certain deed dated May 13, 1848, from O. B. Brown, the purchaser at the tax sale, to W. V. H. Brown (father of the plaintiffs in error), recorded on May 30, 1848, in Liber W. B. 143, fol. 352, was on behalf of the plaintiffs in error offered in evidence and excluded by the trial court on the objection of the defendants in error, and said ruling of the trial court was carried to the general term for review by the 9th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., pp. 36 to 38.)

At the trial the plaintiffs in error offered George W. Brown as a witness on their behalf and offered by him to explain, rebut, and contradict the admissions contained in said bill in equity which the defendants in error had put in evidence and to prove that they were made by him in ignorance of the facts, and that he was mistaken when he made them, and that he had since found out that the things therein stated by him were not so, and now offered to disprove them

and to prove the contrary (Rec., pp. 38 and 39); but on the objection of the defendants in error the trial court refused to allow such proof to be made and held the admissions irrebuttable and conclusive upon the plaintiffs in error, and said rulings of the trial court were carried to the general term for review by the 10th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., pp. 38 to 39.)

At the trial the plaintiffs in error offered to prove that said William V. H. Brown died intestate, and that the plaintiffs in error and Owin Brown, their brother, were at his death his only surviving children and heirs-at-law, and that said Owin Brown had since died intestate, unmarried, and without issue, leaving the plaintiffs in error as his only heirs-at-law; but on the objection of the defendants in error the trial court refused to allow such proof to be made, and said rulings of the trial court were carried to the general term for review by the 11th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., p. 39.)

At the trial the plaintiffs in error offered to prove that from the time of the tax deed the property in controversy stood on the tax books in the name of the tax-sale purchaser and those claiming under him, and that he and they had paid all the taxes upon the property in controversy, and that the defendants in error had not offered to pay their share of said taxes, but had refused so to do, and that plaintiffs in error had placed a fence around the land in controversy in 1880 or 1881. The defendants in error objected, and on their objection the trial court refused to allow such proof to be made, and said rulings of the trial court were carried to the general term for review by the 12th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., pp. 39 and 40.)

The trial court allowed the defendants in error at the trial to take a nonsuit as to the said Wm. V. H. Brown, Thomas B. Brown, and Harrington Brown, and, without amending their declaration, to proceed with the case against the said

George W. Brown for the entire moiety of the fee simple claimed in the declaration, and said rulings of the trial court were carried to the general term for review by the 13th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., p. 40.)

At the trial the court, at the request of the defendants in error, granted their prayer and instructed the jury as follows:

"If the jury believe the evidence they will find a verdict for the *plaintiff, as claimed in the declaration in this suit,* against the defendant George W. Brown."

To which prayer and instruction the plaintiffs in error objected and excepted to the granting of said prayer and the giving of said instruction, and said ruling of the trial court in so doing was carried to the general term for review by the 14th bill of exceptions of the plaintiffs in error, as therein appears. (Rec., p. 41).

On the trial the plaintiffs in error were allowed to prove by witnesses "*that from January,* 1842, *to January,* 1849, *said witnesses knew and were familiar with the condition of the whole square No.* 275 (embracing the *locus in quo*), *and that during said period the whole of it was vacant and unoccupied and was merely a part of the open commons, and that it was then in the 'slashes,' being a marshy part of the said commons; that during no part of said period was there ever any house or building upon said square or any part thereof, nor was such square or any part thereof enclosed or fenced or in the actual occupancy of any person during any portion of said period.*" (Rec., p. 38.)

The court in general term adjudged and ordered "that there is *no error* in the *rulings* and *judgment* of the circuit court herein, and the said judgment is hereby *in all things affirmed,*" &c.

All the rulings of the trial court were brought before the general term for review by the *bills of exceptions* and

by the *appeals* and are brought before this court for review by writ of error.

The plaintiffs in error contend that the demurrer to the declaration was well taken, and that the general term should have so held; that the *particular estate* of the *husband* and the *reversion* or *remainder* of the *wife* in the lands of the wife are held by them, not as a joint estate, but as *separate* estates in *each*, and that, being *separate* estates in each, the *husband* having the *one* estate and the *wife* having the *other* estate, they cannot under the laws of this District unite together in one action to recover the two estates together—that is to say, the whole fee simple; and, further, that as to the wife's estate in *remainder* or *reversion* there is no right of *entry*, right of *possession*, or right of *action* in ejectment *till the husband's particular estate is terminated by his death;* that these defects and objections appeared both upon the face of the *declaration* and upon the *proofs* at the trial.

That the admissions of George W. Brown were not conclusive upon the plaintiffs in error or upon him, but were open to explanation, rebuttal, or contradiction; that they could be shown to have been made in ignorance and without knowledge of the real facts, and that he had afterwards found out that he was mistaken and that the facts were different and were the other way; that he could prove the real facts and show the admission to be incorrect or untrue.

That the plaintiffs in error should have been allowed to make such proof.

That Mrs. Beale was not a competent witness to testify in the case at all, because her husband was a party to the suit and his interest and his estate was sued for and sought to be recovered, and that for the same reason her testimony was inadmissible.

That the court should have so ruled.

That even if she was competent to testify on her own behalf and her testimony admissible as to her own interest, yet she was incompetent on behalf of her husband, and her

testimony was inadmissible as to him and as to his interest or estate or in proof thereof; that the court should have so ruled.

That the motion in the nature of a demurrer to the evidence—that is, a motion to the court to instruct the jury that upon the evidence the defendants in error could not recover—should have been granted, and certainly should have been granted as to Mrs. Beale and her interest.

That the tax-sale advertisement (Rec., pp. 34, 35) was good and sufficient and complied with all the requirements of the law, and that the tax deed should have been admitted in evidence, and that the tax title was good and sufficient and valid and regular.

That though a co-tenant who is in possession may not be able to buy in an adverse or outstanding title for his own benefit without first giving up his possession as co-tenant, yet when neither he nor any of the co-tenants are in possession and the time of redemption has elapsed the rule is the other way, and in such case he has the right to buy in for his own exclusive benefit an outstanding, an adverse, or a paramount title and to enter under the same.

That even where a co-tenant *who is in possession* buys a tax title before the time of redemption expires and pays the whole of the subsequent taxes he has such a lien or claim upon the property as against other co-tenants to whom the purchase enures that they cannot recover from him in ejectment without first paying to him their share of the taxes and expenses so paid by him.

That upon the pleadings and proofs the plaintiffs in error were entitled to have the verdict of the jury rendered in their favor, and that the court should have so charged or instructed the jury.

That the court should have instructed the jury that said Elizabeth B. Beale could not nor could the defendants in error recover her estate in *reversion* or *remainder*, which

would commence on the termination of her husband's particular estate, for want of a *jus possessionis* as to the same.

That the court erred in granting the prayer of the defendants in error and in instructing the jury as prayed by the defendants in error; that the bills of exception were well taken; that the general term erred in holding that there was no error in the rulings and judgment of the court below and in affirming said judgment in all things.

Such are the questions involved and the manner in which they are raised.

ASSIGNMENT OF ERRORS.

Now come the plaintiffs in error and make this their assignment of errors, and for such assignment of errors say that in the record, proceedings, rulings of the court, and judgment in the cause in the supreme court of the District of Columbia there are manifest errors which have intervened to their great damage and prejudice, and that there are errors in this, to wit:

First. That the supreme court of the District of Columbia, sitting in general term, erred in adjudging, ordering, and holding that there was no error in the rulings and judgment of the circuit court and in affirming said judgment in all things, because said circuit court erred in overruling the demurrer to the declaration and in rendering the judgment which was entered against the plaintiffs in error, and that said court in general term erred in not sustaining the appeals taken by the plaintiffs in error to said court in general term.

Second. That said court, sitting in general term, erred in not sustaining the *first* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in

said *first* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Third. That said court, sitting in general term, erred in not sustaining the *second* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *second* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Fourth. That said court, sitting in general term, erred in not sustaining the *third* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *third* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Fifth. That said court, sitting in general term, erred in not sustaining the *fourth* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *fourth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Sixth. That said court, sitting in general term, erred in not sustaining the *fifth* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *fifth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Seventh. That said court, sitting in general term, erred in not sustaining the *sixth* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *sixth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Eighth. That said court, sitting in general term, erred in not sustaining the *seventh* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *seventh* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Ninth. That said court, sitting in general term, erred in not sustaining the *eighth* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *eighth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Tenth. That said court, sitting in general term, erred in not sustaining the *ninth* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *ninth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Eleventh. That said court, sitting in general term, erred in not sustaining the *tenth* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in

said *tenth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Twelfth. That said court, sitting in general term, erred in not sustaining the *eleventh* bill of exceptions of the plaintiffs in error and erred in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *eleventh* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Thirteenth. That said court, sitting in general term, erred in not sustaining the *twelfth* bill of exceptions of the plaintiffs in error and in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *twelfth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Fourteenth. That said court, sitting in general term, erred in not sustaining the *thirteenth* bill of exceptions of the plaintiffs in error and in affirming and holding there was no error in (instead of reversing) the rulings of said circuit court in said *thirteenth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Fifteenth. That said court, sitting in general term, erred in not sustaining the *fourteenth* bill of exceptions of the plaintiffs in error, which contained the following prayer or instruction therein complained of, viz: "If the jury believe the evidence, they will find a verdict for the plaintiff, *as claimed in the declaration in this suit,* against the defendant George W. Brown," and in affirming and holding there was no error in (instead of reversing) the rulings of said

circuit court in said *fourteenth* bill of exceptions set forth as objected to and excepted to and thereby brought to said court in general term for review.

Sixteenth. That the supreme court of the District of Columbia, sitting in general term, erred when, on the sixth day of November, 1888, said court adjudged and ordered "that there is no error in the rulings and judgment of the circuit court herein, and said judgment is hereby in all things affirmed, and that the defendant George W. Brown and James E. Fitch, surety in his undertaking for the appeal herein, pay the costs of this appeal."

Seventeenth. That there are other and manifest errors in said record, as will appear by inspection thereof, and which are hereby assigned, by which, and by each and all of said errors in this assignment of errors referred to, the plaintiffs in error in this cause and each of them are injured and aggrieved; wherefore, the amount in controversy being over the jurisdictional amount of $5,000.00, they pray for a correction of said errors and for a reversal of said judgment.

BRIEF OF ARGUMENT.

In this jurisdiction it is well settled that a plaintiff in ejectment must recover, if at all, *upon the strength of his own title;* the weakness of his adversary's title cannot avail him.

McNitt *vs.* Turner, 16 Wall., 362.
Watts *vs.* Lindsey, 7 Wheat., 161.
Hardin *vs.* Jordan, 140 U. S., 379.
Lannay *vs.* Wilson, 30 Md., 545.
Mitchell *vs.* Mitchell, 1 Md., 52.
Wilson *vs.* Inloes, 11 G. & J. (Md.), 358.
Hall *vs.* Gittings, 2 H. & J. (Md.), 125.

And it is equally well settled that ejectment is a possessory action and that in it the plaintiff to entitle himself to recover must have *a present right of possession.*

Lessee of Smith *vs.* McCann, 24 How, 403.
Cincinnati *vs.* White, 6 Peters, 441.
Love *vs.* Simms, 9 Wheat., 524.
Berry *vs.* Derwort, 55 Md., 71.
Lannay *vs.* Wilson, 30 Md., 545.
Mitchell *vs.* Mitchell, 1 Md., 52.
Wilson *vs.* Inloes, 11 G. & J. (Md.), 358.
Hall *vs.* Gittings, 2 H. & J. (Md.), 125.

Where there is a *life estate* in A and the *remainder* or *reversion* is in B there is not, in case of an ouster by a third person, any *present* right in A and B *together* to recover the fee simple.

The *life tenant* has a right in his own name *alone* to maintain ejectment for his *life estate*, but a *reversioner* or *remainderman* cannot, for want of a *jus possessionis*, maintain ejectment for *his* estate *until the termination of the particular estate*, and for this reason no ouster of the tenant of the *particular estate* or occupation under the party making the ouster will or can affect or run against *the right of the reversioner or remainderman till the death* of the tenant of the *particular estate.*

In Batterton *vs.* Yoakum the testator's will devised the estate to the testator's wife, Nancy Batterton, "so long as she remained his widow and no longer, then the estate to be equally divided among the testator's heirs."

The court, in an ejectment suit by the heirs against a third person, said:

"From the view we take of the case it is necessary to examine but one question. The proof shows that Nancy Batterton is still living and remains the widow of David Batterton. *If there is an outstanding life estate* in Nancy Batterton

in the lands *the plaintiffs cannot recover in ejectment. To entitle them to recover in this action they must have such estate in the lands as entitled them to the present possession.*"

Batterton *vs.* Yoakum, 17 Ills., 289.

And in another case, where a testator had devised *a life estate* to his widow and after her death *the fee* to the testator's three daughters, adverse possession and limitations commencing during the life of the widow were set up as a defense to an ejectment suit brought by the daughters upon the widow's death, and the court said:

"The only material question of law arising upon the case is whether the lessors are not barred by the statute of limitations. * * * Neither a descent cast nor the statute of limitations will affect a right, *if a particular estate existed* at the time of the disseizin or when the adverse possession began, *because a right of entry cannot exist during the existence of the particular estate*, and the laches of the tenant for life will not affect the party entitled. An entry to avoid the statute must be an entry for the purpose of *taking possession* and *such an entry cannot be made during the existence of the life estate.*"

Jackson *vs.* Schoonmaker, 4 Johns. (N. Y.), *401, 402.

To the same effect as this case are the following authorities:

McCarry *vs.* King's Heirs, 22 Tenn. (3 Humph.), *274, 275.

Jackson *vs.* Seleck, 8 Johns. (N. Y.), 269.

Patrick *vs.* Sherwood, 4 Blatch. C. Ct., 114.

Sheets *vs.* Selden, 2 Wall., 177.

"There can exist at the same time but one right of entry."

Botts *vs.* Shields, 3 Littell (Ky.), 32, 35.

The rules are the same if a *particular* estate is in a *husband* and the *reversion* or *remainder* is in his *wife.*

The husband has, by virtue of the marriage, *a vested legal freehold estate* in the lands of his wife, and *such* estate is "*his*," not her's.

Kibbie *vs.* Williams, 58 Ill., 30.
Canby *vs.* Porter, 12 Ohio R., 80.
Shortall *vs.* Hinckley, 31 Ill., 226.
Thompson's Heirs *vs.* Green, 4 Ohio St., 223, 227.

"*He holds it as if he had acquired it by deed.*"
Shortall *vs.* Hinckley, 31 Ill., 227.

Or, as expressed in another case—

"By the common law *the freehold of the husband thus acquired was as perfect, absolute, and unfettered as though derived by deed.*"
Thompson's Heirs *vs.* Green, 4 Ohio St., 223.

He may *alien his particular estate without* his wife *uniting* or *consenting.*

Shortall *vs.* Hinckley, 31 Ill., 226, 227.
Thompson's Heirs *vs.* Green, 4 Ohio St., 223, 227.
Prall *vs.* Smith, 31 N. J. L., 245, 246.

And *it* may be taken on execution against him.

Shortall *vs.* Hinckley, 31 Ill., 226.
Thompson's Heirs *vs.* Green, 4 Ohio St., 223–227.

In Canby *vs.* Porter, which was an ejectment suit, the defendant was tenant by the curtesy, in right of his wife, of the real estate in controversy. His interest therein was sold under execution at law to satisfy a judgment against him in favor of plaintiff's lessor, who became the purchaser of the premises. The court say :

"Plaintiff's right to recover seems plain, for the interest of the husband is *a legal estate.* It is a *freehold* during the *joint lives* of himself and wife, with a *freehold* in *remainder* to

himself for *life* as tenant by the curtesy *and a remainder to the wife and her heirs in fee.* * * * It is in every sense *his* '*land*' within the meaning of the statute and liable to respond for his debts."

Canby *vs.* Porter, 12 Ohio R., 80.

A husband may make his entry upon lands of his wife or he may lose his estate therein *jure uxoris* or by the curtesy by laches or limitations.

In Kibbie *vs.* Williams the court held that "where a married woman owned land in her own right before the adoption of the married woman's law *the husband became vested with a life estate in the land,*" and, adverse possession having run, the court further held that the same "operated as a bar to the assertion of title by the husband and wife or their grantee *during the life of the husband,*" and that "*such an estate in the husband is a freehold,* and, like an estate by the curtesy, *can be barred by the statute of limitations.*"

Kibbie *vs.* Williams, 58 Ill., 30, 31.

In another case where ejectment was brought by *husband and wife* and limitations relied upon by the defendant the court say:

"At the death of Mrs. Wetlener, his mother-in-law, he (a tenant *jure uxoris*) was not laboring under any disability whatever; he might, as husband, have maintained ejectment on a demise *in his own name* and recovered *for his sole benefit* during their *joint lives, because he had an interest and legal title during the joint lives of himself and wife.* As against him the statute continued to run. The action was not commenced until April, 1848, when more than twenty years had elapsed, &c., &c. Wills Sharp, the husband, was therefore *barred* from maintaining this suit *in his own name. Uniting his wife's name with his,* whilst it did not prejudice her rights, *did not aid him.*"

Sharp *et ux. vs.* Head, 11 B. Mon. (Ky)., 277, 278.

See also the following cases to the same effect:

Shortall *vs.* Hinckley, 31 Ill., 227, 228.
Thompson's Heirs *vs.* Green, 4 Ohio St., 227.
Gregg *vs.* Tesson, 1 Black (S. C)., 154.
Gregg *vs.* Bryant, *id.*, 155, note.
Wright *vs.* Plumptre, 3 Barnwall & Alderson, 475.
Hulm *vs.* Heylock, Cro. Car., 201.

Where husband and wife are ousted from wife's lands *during coverture* the interests and estates of the husband and wife are *separate* and *distinct.* The husband's interest is *in presenti;* the wife's interest is *in futuro.* The *exclusive right of possession* during the coverture *is in the husband alone.* He has during coverture the right of action, and without joining his wife and without her consent can sue *in his name alone* to recover the possession of his particular estate *in his own right* and *for his own use.*

In Neal *vs.* Robertson the court, in speaking of the respective interests of husband and wife in the real estate of the wife, say:

"Their interests are so far divisible that he can maintain a suit *in his own name alone* for the land, and can, by his *separate* deed, alien it during their joint lives. * * * A descent cast does not bar the right of a *feme covert* where the disseizin takes place during coverture or during her infancy, if she marries before her full age. Yet it is well settled that it does bar the right of entry of the husband, &c., but after his death the wife or her heirs may enter nothwithstanding his laches."

Neal *vs.* Robertson, 2 Dana (Ky.), 89.
S. P. Downing *vs.* Ford, 9 Dana (Ky.), 392.
M'Clain *vs.* Gregg, 2 A. K. Marsh (Ky.), 457.
Shortall *vs.* Hinckley, 31 Ill., 227.
Thompson's Heirs *vs.* Green, 4 Ohio St., 224, 227.

It is because the wife's interest is *in futuro* and not *in presenti* and because she has no *present* right of entry and no *present* right of possession during coverture that it always has been held that where the husband's interest is barred neither he nor she nor both of them together nor their grantee (though the wife's interest be not barred) can maintain ejectment during the joint lives of husband and wife. Yet in such case, *upon the termination of the husband's particular estate*, the wife or her representatives may then sue for her interest on the ground that her estate, being a *remainder or reversion*, then *for the first time* takes effect, and that *till* the termination of her husband's *particular estate* no right of enjoyment or of entry or of possession or of action *has existed* in her or in any one as to such estate in reversion or remainder.

Where the title to real estate was cast by descent upon a married woman and she and her husband had conveyed their title to another, who as their grantee brought ejectment, this court said:

"A point has been made on the part of plaintiff that the statute cannot run against him on the ground that at the time of the commencement of adverse possession Mrs. Gendron, the daughter and heir of Antoine, and through whom the plaintiff derives title, was a *feme covert* and within the saving clause of the statute of limitations, and that the seven years have not elapsed since she parted with her title; but the answer to this is that *her husband*, who joined her in the deed, *is still alive*, and *as he had a life estate* in the lot and was *competent to sue* for the recovery of *it*, the statute *ran against him*, and the purchaser from or through him took the estate subject to the operation of this limitation. Mrs. Gendron and her husband conveyed in 1849, while the statute was running against the *husband*. The grantee or those coming in under him *should have brought the suit for the husband's interest within the seven years. After the termination of the life estate* the person holding the interest in *re-*

mainder may *then* bring a suit to recover the estate of the *wife.*"

Gregg *vs.* Tesson, 1 Black. (S. C.), 154.
S. P. Gregg *vs.* Bryan, *id.*, 155, note.

In Shortall *vs.* Hinckley the court say:

"At the death of Hiram Gilson all these sisters were married and had children then living, the issue of their several marriages. Their husbands thereby became invested with or entitled to *a life estate* in their wives' shares of this property by the courtesy initiate. This *life estate* of the *husband*, with the wife's *remainder*, constituted the entire estate in or title to the wife's share of the property. This interest of the *husband* in the wife's property is a *vested legal estate*, subject to *sale on execution* or *by himself*. He could have *leased it* to the extent of the whole or any portion of the term. *Nor can the estate of the wife take effect in her during the coverture.* The estate of the *husband* is *carved out of* and is a *distinct* estate from *hers*. He holds *as if he had acquired it by deed*, and it is liable to all the *incidents* of any other *freehold* or *life estate* until it is again merged into the fee simple. If he were to *convey or lease it* the title of the grantee or lessee could not be defeated by the *husband and wife joining* in a subsequent conveyance. They would thereby pass the wife's *remainder*, but could not affect the *present estate* created by the *husband's previous* conveyance. Until the *death of the husband* his grantee would be entitled to hold the premises. *Nor need the wife join with* the husband to pass *his life estate nor in a suit to recover the possession for the husband* or for damages sustained by trespass. *He then having a separate estate from that of his wife* in the premises, with a *present right of possession*, and being at liberty to sue and recover the possession *in his own right* for *his own use* without the assent of his wife, no reason is perceived why *his* title may not be *barred* by the statute of limitations.

It has never been questioned that a term of years or *life estate* might not be as effectually barred as a fee simple or other estate, and no reason is perceived why the husband's *life estate* in the lands of his wife should form an exception to the general rule. This is by no means a question of first impression (citing authorities). The *bar* of the statute against a recovery by the husband *cannot be avoided by the*

institution of a suit by husband and wife. The wife's interest is not a present but a future estate dependent upon the death of the husband. It is true that by operation of the statute the husband may have *lost* his estate in the lands, but *it does not therefore follow that the wife has become vested with his estate,* or that it has *merged* in the fee *and created a present estate in the wife. She is unable to sue alone during the coverture,* and if she join with the husband *his right is barred* by the statute. If she can recover at all it must be jointly with him, and *when his right is defeated there can be no remedy.* This view of the case seems to have been almost conceded in the argument. This *life estate,* like any other *present* estate capable of being reduced to possession by the owner not under disability or within the savings of the statute, is subject to and governed by its provision. * * * *The recovery, then, by the husband and wife being barred, their grantee is in the same condition as though the estate were held by them.*"

Shortall *vs.* Hinckley, 31 Ill., 226 to 228.

And in Thompson's Heirs *vs.* Green the court say :

" By the common law the *freehold* of the *husband* thus acquired *was as perfect, absolute, and unfettered as though derived by deed* and could be *aliened* by him without the consent of the wife or taken upon *legal process* for his debts. It arose by operation of law as an *incident* to the marriage *and carved out of the estate of the wife a freehold interest in favor of the husband, leaving in her, or her heirs, only the reversion to be enjoyed after the termination of the life estate.* Such being the nature and extent of the husband's interest, the question arises, Is this action brought to recover that interest? The husband having a *freehold* with the *present right of exclusive* enjoyment and the wife or her heirs *only the reversion,* the former, of course, has the *only* right of entry. The *exclusive right of possession* which before belonged to the *husband* has been *lost* by him and *acquired* by the defendant, and *as the wife's right of entry before was postponed to the termination of the coverture, it cannot now accrue at an earlier period, and until it does accrue it is perfectly clear no action of ejectment can be maintained predicated upon her interest in the land.* The husband's right of entry then is *lost* by him and *acquired* by the defendant, and *the wife's*

has not yet accrued. The husband, therefore, has no right to recover *alone*, because he has *no title;* and if the wife could sue she would have no right to recover *alone*, because she has *no present right of entry.* As neither has any right upon which a recovery could be had, suing *alone*, I confess myself wholly unable to see how, by joining their fortunes together, a cause of action is made. The marriage invests the husband with a freehold estate in the lands of the wife, entitling him to the *exclusive* possession during the coverture and subject to be conveyed by him, taken for his debts, or lost by his laches. *During its continuance he alone has the right of entry, and consequently the right alone to maintain the action of ejectment to recover the possession when it is wrongfully withheld from him.* * * * And although he may for *conformity* join the wife with him in the demise, it is still upon *his right alone* that a recovery can be had, and whatever has barred that right has effectually barred the action."

Thompson's Heirs *vs.* Green, 4 Ohio St., 216, 224, 227.

In an ejectment by the wife's heirs limitations were relied on, and the question was whether or not a right of action accrued to the wife or her heirs during the husband's particular estate. The court say:

"But no right or title or cause of action has come, accrued, or fallen *to enable a reversioner or remainderman, before the termination of the particular estate, to sue* the tenant in possession, and therefore the *reversioner* or *remainderman* under such circumstances, whether within an exception of the statute or not, *is wholly unaffected by the statute.* The person *barred* by the statute is one *whose right to enter or bring suit has come or accrued* and who *after that* event *omits* or *neglects* for the space or term of seven years *to bring such suit.* Those claiming under the disabilities enumerated in the statute have the *right and power* to bring suit, but are *excused* therefrom on account of such disabilites. *But a remainderman or reversioner has no right or power to bring an action; he is not excused therefrom, for he cannot do it at all.* His *omission* of it is *no neglect;* his *postponement* of it is *no laches; his right to an action has not yet accrued.* He *cannot* during the time of the tenant for life *lose* his estate or *be barred* of his

right by the fault or wrong, neglect, or laches of the owner of the *particular* estate. We are of the opinion, therefore, in this case that the statute did not commence running against the heirs of Mrs. King till the determination of the life estate of the husband, Wm. King."

McCorry *vs.* King's heirs, 22 Tenn. (3 Humph.), 274, 275, 276.

To same effect—

Davis *vs.* Tingle, 8 B. Mon. (Ky.), 541, 542.

Gill *vs.* Fauntleroy, 8 B. Mon. (Ky.), 188.

"The estate of the wife in the lands was *not a present estate*, but one subject to the estate of the husband, conveyed to him by the *ceremony of marriage. Her estate was what remained after his death.*"

Prall *vs.* Smith, 31 N. J. L., 241, 246.

In another case the court say:

"Cooper then had a *life estate* in the premises in question, which was initiate, as it is expressed upon the birth of a child in 1793, and became consummate upon the death of his wife, in 1797, and continued until his death, in 1817. During the existence of this *particular estate* the lands of Mrs. Cooper *did not descend to her heirs so as to give them a right of entry.*"

Jackson *vs.* Johnson, 5 Cowen (N. Y.), 95.

To same effect—

Jackson *vs.* Sellick, 8 Johns. (N. Y.), 269.

Jackson *vs.* Schoonmaker, 4 Johns. (N. Y.), *401, 402.

In the case of Collins *vs.* Riley, which was an action of ejectment, a married woman had inherited real estate, and she and her husband, *after his interest therein had become barred*, conveyed the same to the plaintiff, and shortly afterwards both husband and wife died, he preceding her. In that year and after her death their grantee brought ejectment, and this Court said:

"Further, if it be conceded, *as perhaps it must be*, that the husband and wife, the former being barred, *could not have brought a joint action* to recover the lands, and *that during the life of the husband* Riley *could not have asserted his rights* as against the defendants, it would not follow that he got nothing by the conveyance. He certainly did acquire the *wife's interest*, and when her disability was removed he could enter upon the land or bring an action for its recovery, *precisely as she could have done* upon *the death of the husband* had she not joined in the conveyance."

Collins *vs.* Riley, 104 U. S., 326, 327.

In the case at bar we respectfully submit that *no right of entry, no right of possession, and no right of action can exist for the reversion or remainder* claimed by Mrs. Elizabeth B. Beale in the *locus in quo* because of the *particular estate* of her husband, George N. Beale, who is still living. *Her right to her reversion or remainder has not yet accrued and cannot accrue till the death of her husband terminates his particular estate.* In such reversion or remainder her husband certainly has no right, title, claim, or interest whatsoever. He certainly can have no right to recover the *reversion or remainder which is not his*, but is hers. Since no right exists in *either* of them to maintain an action for such reversion or remainder, how can they *jointly* maintain an action for the same?

No one during the life of George N. Beale has a *present* right of entry, *present* right of possession, or *present* right of action for that estate in *reversion* or *remainder* in the *locus in quo*, which only *commences* when his particular estate *terminates.*

The very most that the defendants in error could by any possibility have a right to sue for *is the husband's particular estate.* In such particular estate the wife, as we have seen, has no right whatsoever; it is the absolute property of the husband. The wife has no right of entry, no right of possession, and no right of action for this *particular estate* of the husband. We submit that in a suit to

recover the husband's particular estate the husband should sue *alone* and not jointly with his wife. *He is the real party in interest*, and the statute, § 809, R. S. D. C., provides that—

"All fictions in the pleadings in the action of ejectment within the District are abolished, and all actions for the recovery of real estate shall be commenced in the name of the *real party in interest* and against the party claiming to own or be possessed thereof."

Prior to this act it must be conceded, on the authorities we have cited, that the *husband's particular estate* could have been recovered in ejectment on his *separate demise*, though it is said in some cases that it could *also* have been recovered on the *joint demise* of husband and wife.

Such might possibly have been the case *before* our act was passed, for it might then be said that on their joint demise the wife, by *uniting* with her husband in the *lease*, could not, because of her having *no interest or estate in her husband's particular estate*, thereby impair or diminish the operation and effect of the lease *as a lease of the husband;* that her joinder in the *demise* did no harm, although she had *no interest;* but if such was the case formerly (which we do not admit), yet the statute, § 809, *supra*, has changed all this. The statute abolishes *fictitious parties*, and it abolishes *fictitious leases*. No one but a *real party in interest* can *now* maintain ejectment, and such party now alleges his real interest and estate. The wife has *no interest or estate* in her husband's particular estate and no *jus possessionis* of her own remainder or reversion. She therefore has no standing in court under our present law on which to maintain ejectment *till the termination of the husband's particular estate.* Even prior to our act the courts say:

"The rule in ejectment is (and such has always been the rule) that *the recovery must be of the same character as claimed—*

i. e., an *undivided* interest cannot be recovered where an *entirety* is claimed, or *vice versa.*"

Todd *vs.* Kauffman, 19 D. C., 311.
Carroll *vs.* Norwood, 5 H. & J. (Md.), 174.
Benson *vs.* Musseter, 7 H. & J. (Md.), 212.
Magruder *vs.* Peter, 4 G. & J. (Md.), 331.

In the last of these cases the court, after stating the above rule, further say:

"Although a plaintiff (in ejectment) may declare for less than he can legally *claim, he cannot declare for and recover* MORE *than he is entitled to.*"

Magruder *vs.* Peter, 4 G. & J. (Md.), 331.

In Treport's case the jury gave a special verdict, viz:

"That A was *tenant for life*, the *remainder to B in fee*, and that they *both* by deed indented *joined in a lease* to the plaintiff, and that A, *the tenant for life, was alive*, and whether this should be adjudged in law *the lease of both or not* the jury doubted."

And the court resolved, in the words of the report—

"That presently, by the delivery of the deed, it is the *lease of A during his life* and the confirmation of B, and after the death of A it is the lease of B and the confirmation of A, according to the opinion of Dyer and Brown (Mich., 6 & 7 El., 234, 235); and, because the plaintiff had declared on a joint demise of A and B, it was adjudged against the plaintiff."

Treport's case, 6 Rep., 14*b*.

"For *during the life of the tenant* (as hath been said) it is the *base of the tenant for life*, and therefore *during his life he ought to have declared of a lease made by him*, and after his decease he ought to declare of a lease made by him in remainder."

Co. Litt., 45*a*.
2 Starkie on Ev., *539.
2 Phillips on Ev., *171.

We submit that a *life estate* or a *particular estate* could not *before* our act (§ 809, *supra*) and cannot *since* said act be recovered where a *fee simple* is claimed, because they are of a *different character*.

And unquestionably a *fee simple* cannot be recovered where the parties only prove a joint right to a *life estate* or to a *particular estate*.

And we submit that where the pleadings and the proofs show husband and wife neither of them to have a *jus possessionis* on which to recover the wife's *reversion* or *remainder* and the wife to have *no real interest* in her husband's *particular estate* on which to unite with him in recovering the same and the husband, at most, to have but a *separate* right in *himself alone* to such *particular estate* that it is undoubtedly *error* to allow the *husband and wife* to recover the *fee simple* upon such pleadings and proofs.

We submit that this error was committed in the case at bar, and that such error is all the more serious because under our statute (§ 809, *supra*) the judgment (erroneous though it be, as we have shown to be the case) is conclusive upon the parties if not reversed by this Court, for it is well settled that *after* the enactment of § 809, *supra*, *abolishing fictions* in the action of ejectment and *requiring* the action to be between the *real* parties by *name* as *litigants*, "a final judgment pronounced in an action of ejectment where the claim of title in fee simple by the parties respectively is the subject of controversy and where the land is accurately described *will be a valid legal bar* to a like action subsequently instituted between the *same* parties for the *same* land involving the *same* title and rights."

Sturdy *vs.* Jackaway, 4 Wall., 174 to 176.
Miles *vs.* Caldwell, 2 Wall., 36, 40, 41.
Blanchard *vs.* Brown, 3 Wall., 245.

Surely where a judgment will be *conclusive* upon the parties if not reversed and where it is clearly *erroneous* this Court will *reverse the same.*

The declaration in the case at bar alleges *an ouster during coverture,* and not only joins the wife with the husband, but sues *for her interest* as well as for the husband's interest in the *locus in quo,* though it showed on its face that her interest had not yet accrued. (Rec., p. 1.)

It was demurred to (Rec., p. 2) and the demurrer was overruled (Rec., p. 4), and we submit that the court erred in overruling said demurrer, for the wife was clearly an improper plaintiff. She had no interest in her husband's particular estate and no right of possession of her own reversion or remainder; and, besides, not only she had no interest in his cause of action, but whenever her cause of action accrued to her in the future he would have no interest in it. It was a misjoinder of parties and a misjoinder of causes of action. They had no right to unite for causes of action not jointly but *separately* theirs.

The plaintiffs in error carried the case to the general term, not only by bills of exceptions, but also by an appeal from the judgment *itself* (Rec., p. 7), and so, among other questions, carried the overruling of the demurrer to the general term for review. The general term adjudged that there was *no error* in the *rulings* and *judgment* of the court below, and *in all things affirmed* said judgment (Rec., p. 42), and the writ of error brings the general term's affirmance of the ruling on the demurrer before this Court.

Secondly. The same question was raised by the motion of the plaintiffs in error to take the case from the jury in the 4th bill of exceptions. (Rec., p. 30.)

The court overruled said motion, and that ruling was carried to the general term by said 4th bill of exceptions and is brought here by the writ of error.

Thirdly. The same error, among others, was committed by the trial court when it granted the prayer of the defendants in error—14th bill of exceptions—(Rec., p. 40), for the court there instructed the jury that they must find for the defendants in error "as claimed in the declaration in this suit," and the declaration, as we have seen (Rec., p. 1), claimed the entire fee simple, both the *husband's particular estate* and the *wife's remainder or reversion.*

This ruling was carried to the general term by said 14th bill of exceptions and is brought here by the writ of error.

In the next place, the inquiry arises whether the defendants in error sufficiently proved their source of title and derivation of title.

In Mitchell *vs.* Mitchell, where, by an agreed statement of facts, the plaintiff and defendant both claimed under a common source of title, the court said:

"The general principles of ejectment law in Maryland have been settled by a long series of unvarying decisions and cannot be disturbed by this court, however hard may be their operation in particular cases. Among these is that the plaintiff must recover, if at all, *on the strength of his own title,* and cannot do so because of the weakness of that of the defendant. Another is that he must show that he has the *legal title* to the land and *a right of possession,* and that he *cannot* establish such *legal right* in himself *without first showing the land was granted by the State.*"

Mitchell *vs.* Mitchell, 1 Md., 52.

In Anderson *vs.* Smith the court in general term said:

"Undoubtedly the general rule is that in seeking to make out proof of record title the plaintiff must go back to the original source *and show a grant from either the State of Maryland or the United States,* and then if there should be a hiatus in the chain of title twenty years' possession in conformity with the deeds will raise a presumption of the missing links. * * * In this case there was no possession shown, but simply the naked proof of record title from 1819 to

1871, and the court erred in ruling that that was sufficient proof; but there is another rule of law which may obviate the difficulty, and that is that *where both parties claim title from the same source it is not necessary to go beyond that source.*"
Anderson *vs.* Smith, 2 Mackey, 279, 280.

The defendants in error in the case at bar did not attempt to prove a grant from the State of Maryland or from the United States, but claim that they proved title from a common source by the testimony of the plaintiff Mrs. Elizabeth B. Beale, wife of the plaintiff George N. Beale.

We submit, in the first place, that she was an incompetent witness to testify at all in the case, and, secondly, even if she was competent to testify for herself, yet she certainly was not competent to testify for her husband or concerning his interest, and, as we have already shown, unless the right to his interest was proved the suit could not be maintained.

It cannot be denied that at common law a wife, in such a case, would not be competent to testify either for or against her husband. The rule does not merely afford protection to the husband and wife, which they are at liberty to invoke or not at their discretion, but renders them incompetent, and does not rest on the discretion of the parties (Stein *vs.* Bowman, 13 Peters, 222, 223). Nor does the witness act (R. S. D. C., § 876 and 877), which makes parties to the record or who are interested in the result competent witnesses, have the effect of removing or repealing the common-law disability of husband and wife to testify for or against one another, which rests on the ground of *public policy.* In the case of Lucas *vs.* Brooks, where the wife was a party, this Court said:

"That it is a rule of the common law a wife cannot be received as a witness for or against her husband, except, &c.; but it is argued because Congress has enacted 'that in civil actions in the courts of the United States there shall be no exclusion of any witness because he is a party to or interested in the issue tried' the wife is competent to testify for

her husband. Undoubtedly the act of Congress has cut up by the roots all objections to the competency of a witness *on account of interest;* but the objection to a wife's testifying on behalf of her husband *is not* and *never has been* that she has any *interest* in the issue to which he is a party. *It rests solely upon public policy.* To that the statute has no application. Accordingly, though statutes similar to the act of Congress exist in many of the States, they have not been held to remove the objection to a wife's competency to testify for or against her husband."

Lucas *vs.* Brooks, 18 Wall., 452, 453.

The following cases are to the same effect:

Gee *vs.* Scott, 48 Tex., 513, 516.
Dwelly, 46 Me., 380.
Stapleton *vs.* Crofts, 18 Adol. and El. (U. S.), 369, 370.
Babbat *vs.* Allen, 7 Exch. (W. H. & G.), 613 to 616.
State *vs.* Workman, 15 So. Car., 546.
Schultz *vs.* State, 32 Ohio St., 280.
Stein *vs.* State, 20 *id.*, 334.
Crane, 33 Vt., 20.
Young *vs.* Gilman, 46 N. H., 478.
Corson, 44 *id.*, 587, 588.
Road Co. *vs.* Madans, 102 Ill., 421, 422.
Mitchinson *vs.* Goss, 58 Ill., 366, 369.
McKeen *vs.* Frost, 46 Me., 250.
Dunlop *vs.* Hearn, 37 Miss., 474.
Anon., 58 Miss., 19, 20.
Byrd *vs.* State, 57 *id.*, 244, 246.
Kelly *vs.* Proctor, 41 N. H., 142 to 145.
Breed *vs.* Grove, 41 *id.*, 453 to 455.
Bird *vs.* Davis, 14 W. J. L., 477, 478.
Smith *vs.* R. R., 44 N. H., 334.
Moody *vs.* Fulmer, 3 Grants (Pa.) Cas., 29.

"Although the language of the code (1860) and of the law of 1847, p. 630, was, when literally construed, comprehensive enough to allow *all persons*, with one limited exception, to be witnesses, it was held *not to allow husband and wife to be witnesses for or against each other, and such is now held to be the rule applicable to this relation*, with certain exceptions."
Loudendyke *vs.* Loudendyke, 44 Barb., 368.

In the case of Turpin *vs.* State the act of 1864, section 1, provided "that no person offered as a witness shall hereafter be excluded, by reason of *incapacity* from crime or *interest*, from giving evidence, &c., in the trial of any issue joined or hereafter to be joined, or of any matter or question, or on any inquiry arising in any suit, action, proceeding, *civil or criminal*, in any court, &c., but that *every person* so offered *may and shall be admitted to give evidence*, notwithstanding that such person may and shall have an *interest*, &c., &c., and the *parties litigant* and all persons in whose behalf any suit, action, or other proceeding may be brought or defended, *themselves* and their *wives* and *husbands shall be competent and compellable to give evidence* in the same manner as other witnesses except as hereinafter (in the third section) excepted." Subsequently the third section was repealed, and in lieu thereof there was enacted the following: "In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes and offences, and in all proceedings in the nature of criminal proceedings in any court of this State, &c., the person so charged shall, *at his own request*, but not otherwise, be deemed a competent witness." After the latter act the court held *that a wife could not testify in a criminal prosecution against her husband.* The court said:

"Looking at the language of the first section of the act of 1864, *we think it very clear that, standing alone, it would not operate to alter the rule of the common law* which made a husband or wife an *incompetent* witness in criminal prosecutions against the other. * * * By repealing the third (3d) section of

the act of 1864 the construction of the first section was not changed, and that section, properly construed, *did not remove the incompetency of the wife*, which existed at the common law, to testify in the case of a criminal prosecution against her husband."

Turpin *vs.* State, 55 Md., 477, 478.

Our own statute has been construed repeatedly by our court, and always held not to render either husband or wife competent or compellable to testify for or against the other. The first case was in a suit for divorce *a vinculo*, but *not* on the ground of adultery. The court say:

"Unquestionably, if taken literally, the language of section 876 would include suits for divorce *a vinculo*, but we think that it is not to be so taken, and that several provisions of the next section indicate the paramount reasons of *public policy* which forbid us to apply at all to parties to divorce suits the general provision which allows *parties* to suits to testify as witnesses. * * * It might seem that nothing could be more important to society than the conviction and punishment of criminals who violate its peace; yet the legislature has declared, by the provisions of these sections, that the preservation of its fundamental institution of marriage is even *more important* to society than the punishment of its criminals, and that husband and wife shall not be arrayed against each other as witnesses, even for the purpose of public justice. *Crime shall not be proved by such testimony, even if it must thereby go unpunished.* When the preservation of the family is thus placed by this very statute above the protection of the public peace against crime, can it be for a moment supposed that the same statute intends that the very institution which is thus treated as of *paramount* importance shall itself be the occasion of arraying husband and wife against each other as witnesses? We only weaken this argument by dwelling upon it. * * * Upon these grounds we are of opinion that section 876 has *no* application to parties to suits for divorce. It was intended *only* to remove that disability which arose from the single fact of being a party, *and does not affect disqualifications which rest upon other*

grounds. For example, a party who is *infamous* is not thereby made competent because the disability of *parties* is removed."

Burdette *vs.* Burdette, 2 Mackey, 469 to 472.

And in another case where a wife was called as a witness in a suit to which she and her hesband were parties the court say:

"Her husband was a codefendant and he objected to her examination. The provision in the act that a *party in interest or to the record* may be examined has nothing to do with this question, &c., &c. The evidence acts simply relieve the particular liabilities enumerated, that the party called is *interested* or is a *party;* but the disabilities arising from *want of age* or *mental infirmity* or *infamy*, &c., &c., *or that the witness is called to testify for or against her husband* (except in particular cases), *remain, notwithstanding the witness may happen to be a party to the suit or may be interested in the result.*"

Clark *vs.* Krause, 2 Mackey, 572, 573.

S. P. Pillow *vs.* Bushnell, 5 Barb. (N. Y.), 158 to 161; and

Dowley *vs.* Ayers, 23 Cal.,* 110, 111.

We submit, therefore, that Mrs. Beale was not a competent witness to testify in the case, her husband being a party to the suit. *Nor can it be said* that she was testifying *not for her husband, but only for herself.* Such a contention is absurd. The record, p. 28, states that the "*plaintiffs*," to further maintain said issues on "*their*" part joined, offered her as a witness on "*their*" behalf. If it be held that Mrs. Beale is a proper party plaintiff in this suit, then it might well be said that she would be a mere *figure-head*, having no interest to recover and no occasion to be joined in the suit; but as to Mr. Beale it is just the reverse. He is the substantial party and the *only* necessary party plaintiff. His right of recovery is the *only* right of recovery. His particular estate is the *only* thing upon which the cause of action can be grounded. If he has no interest, or fails to prove his interest, the suit must fail. Mrs. Beale was unquestionably allowed to testify

for her husband and did testify for him. The defendants below duly objected both to the competency and the admissibility of her testimony for her husband and as to his interest, and also to her competency and the admissibility of her testimony at all in the case (Rec., p. 28). The court overruled *each* of said *objections* and *allowed* her to testify and *admitted* her evidence. (Rec., p. 28, fourth bill of exceptions.)

The general term adjudged that there was *no error in these rulings* and affirmed *in all things* the judgment of the court below (Rec., p. 42.) We submit that the court erred in so holding.

The defendants in error claim, however, that even if there was error in the rulings as to Mrs. Beale that still the admissions in the bill of complaint (Rec., pp. 19 to 23) sufficiently proved a common ancestor and the derivation of title from such source of title.

But the plaintiffs in error offered to rebut the said admissions and to prove that they were made under a misapprehension of the facts and in ignorance of the real facts, and that they were incorrect, and that they had been repudiated and were still repudiated as incorrect, and all this the defense offered to prove by the plaintiff in error George W. Brown, and the court refused such offer. (Rec., pp. 38 to 39.)

Where an admission was contained in a letter the court, after holding that the letter was *evidence,* said :

"But the admission of a party of a fact *is not conclusive upon him. He may establish* by other testimony *that the fact so admitted did not exist.*"

Rice *vs.* Bank, 7 Humph. (Tenn.), 41.

"It is an elementary principle that the admissions and confessions of parties are admissible in *evidence* when pertinent to the issue which is to be tried. They are *not* by any

means *conclusive* and not necessarily even *prima facie* evidence of the fact to which they relate," &c.

Stephens *vs.* Vroman, 18 Barb. (N. Y.), 257.

"A party is *not* bound by an admission which operates to his prejudice if it were made under the authority of a judicial decision which has since been overruled."

Hays *vs.* Cage, 2 Tex., 501, 515.

"An admission by a party in his pleading in an action is *evidence tending to prove* the same fact in another suit between the same parties, *but is not conclusive.*"

Rich *vs.* Minneapolis (Minn.), 41 N. W. Rep., 455.

And where a party on taking the benefit of the insolvent act *swore* that certain goods described in her schedule belonged to the creditors of her deceased husband, but afterwards brought an action to recover them, claiming them as her own, Park, B., said:

"How is she estopped, &c.? It was *only evidence* to go to the jury. *It is quite clear she was not precluded from afterwards denying her former statement;*" and the entire court held "that the fact of the plaintiff's *swearing* that the goods belonged to her husband's creditors and afterwards claiming them as her own was an *inconsistency* for the consideration of the jury but that she was *not estopped* by her *oath* from setting up a right to the goods in herself."

Thornes *vs.* White, 1 Tyrwitt & Granger, 110, 112.

And in another case the court say the "admissions made by plaintiffs *were not conclusive upon them* unless they were made under such circumstances as to amount *to an estoppel in pais*, which the testimony show was not the case."

Garrett *vs.* Garrett, 27 Ala., 698.

"At best the admission of a fact when not under such circumstances as to work an *estoppel* against the person making it is but *evidence* of the existence of that fact," and can be rebutted by other evidence.

Wynn *vs.* Garland, 16 Ark., 469.

"Admissions made with knowledge only of a *certain state of facts cannot bind* the defendant *if the facts are wholly different from what he supposed when the admissions were made.*"

Whitacre *vs.* Culver, 8 Minn., 138.

"It is proper to add at this place that the pleadings of a party *in one suit* may be used as *evidence* against him *in another, not as an estoppel*, but as proof, *open to rebuttal and explanation* that he admitted certain facts. * * * *Admissions do not furnish conclusive evidence* of the facts admitted *unless they* were made under such circumstances as to *constitute an estoppel* or were made in the pleadings in an action when they are conclusive in *that* action."

Boots *vs.* Canine, 94 Ind., 411, 415.
S. P. Wharton on Ev., § 838.

"A party is always allowed to show what the complete *admission* was; *and he may even show the admission to be erroneous or untrue* unless the other party may have been led by such admission to *alter his condition*, when he would be estopped from denying it."

Davis *vs.* McCrocklin, 34 Kan., 222.

"There is no doubt but the express admissions of a party to the suit, &c., are *evidence*, &c., against him, but we think he is at liberty to prove that such admissions were *mistaken* or *untrue*, and is *not estopped or concluded* by them *unless another person has been induced by them to alter his condition.* * * * The mere fact that an admission was made *under oath* does not seem alone to render it conclusive against the party."

Carter *vs.* Bennett, 4 Fla., 343.
S. P. R'w'y *vs.* Bell, 24 Ill., 452.

"Admissions are to go to the jury, but a partymaking them is at liberty to disprove them—to show by proof *aliunde* they were *not true* or *made for a purpose.* The jury are to determine what weight should be given to them, &c. *Unless admissions have induced a person to act on them and so altering his condition* they may be shown to be *untrue*, but if a party has *acted* on them they will operate as an *estoppel* on the party making them."

Young *vs.* Foute, 43 Ill., 39.

Admissions are *not conclusive even in the same case in which they were made* where they have been withdrawn so as not to be part of the pleadings upon which the cause is tried. In such case they may be introduced in evidence against the party who made them, but are not binding upon him. He may show that they were made by mistake or without knowledge of the facts, or otherwise explain them, rebut them, or contradict them.

Raridan *vs.* R. R. Co., 69 Iowa, 531.
R. R. Co. *vs.* Evarts (Ind.), 14 N. E. Rep., 369, 370.

In the case at bar the admissions were made after the institution of this suit. It is not pretended that they were in any way acted on by the defendants in error or either of them, or that they or either of them ever in any way altered their condition in consequence of said admissions.

Yet the court refused to let the plaintiff in error George W. Brown either explain them, rebut them, or contradict them, although the defense offered so to do and called him as a witness. We submit that the trial court erred in its ruling upon this subject (Rec., pp. 38, 39), and that the general term erred in holding that there was no error in the rulings and judgment of the court below and in affirming said judgment in all things. (Rec., p. 42.)

And we further submit that, such being the case, the defendants in error should have proved a grant from the State

of Maryland or the United States, and failing to do so could not maintain their action of ejectment.

And now let us briefly refer to the points concerning the *tax title.*

The city of Washington was by the act of May 4, 1812, amending the preceding acts—May 3, 1802, chapter 53, and February 24, 1804, chapter 14, and May 4, 1812, chapter 75—incorporated by the name and style of "the mayor, aldermen, and common council of the city of Washington." (2 U. S. Stats. at Large, pp. 721, 727, ch. 75, §§ 1, 9.)

Said corporation was given full power to lay and collect taxes, and unimproved lots in the city of Washington on which two years' taxes remained due and unpaid, &c., were authorized to be sold at public sale for such taxes due thereon (*id.*, § 8). By an amendatory act Congress enacted "that the several *collectors of the said* taxes or such other *officers* of the *said* corporation as shall be charged with the duty of selling any such real estate for taxes shall within ten days after every such sale transmit to the clerk of the circuit court for the county of Washington an accurate *report* in writing, *certified* by the *clerk* or *register* of the *said* corporation, containing, &c. (certain specified information), which report it shall be the duty of the clerk of the said court forthwith to record," &c.

Act of February 20, 1819, ch. 35, § 2.
3 U. S. Stats. at Large, p. 486.

It was objected by the defendants in error in the general term that no such report was ever transmitted, filed, or recorded, and they claim that the omission rendered the tax title void.

We submit, however, that such is not the case and that this law had long been *repealed* and was not in force when the tax sale in the case at bar took place.

About a year after passing the act of February 20, 1819, Congress repealed the then existing act incorporating the

city of Washington and all the supplements and amendments to the same, and incorporated the said city under the new name of the "mayor, board of aldermen, and board of common council of the city of Washington," giving the *new* corporation an entirely new and complete charter, with full and ample powers of all kinds, including power to lay and collect taxes and to sell real property, whether improved or unimproved, in the city of Washington on which two or more years' taxes should have remained due and unpaid, &c., and requiring *no such report* to be *transmitted* or *certified* or *recorded*. (Act of May 15, 1820, ch. 104, §§ 1, 2, 7, and 10; 3 U. S. Stats. at Large, pp. 583, 584, 586, and 587.)

And finally Congress passed the act of May 26, 1824, which did not require any report to be transmitted, certified, or recorded, but repealed, in section 1, "so much of the act of May 15, 1820, chapter 104, as is inconsistent with the provisions of *this* act," and enacted:

SEC. 2. "That public notice of the time and place of the sale of all real property, for taxes due the corporation of the city of Washington, shall be given in all cases *hereafter*, by advertisement inserted in some newspaper published in the said city, *once a week, for at least twelve successive weeks*, in which advertisement shall be stated the *number* of the *square* or *squares*, the *number* of the *lot* or *lots*, (if the square has been divided in lots) the name or names of the *person* or *persons* to whom the same may be *assessed* on the books of the corporation at the time of such advertisement, the *amount* of the *tax* due on each square or lot, the *period* for which the same shall be due, and the *aggregate* amount of taxes due on all real property assessed in the name of the same *person or persons*, &c.; *and no sale of real property, for taxes, hereafter made, shall be impaired, or void, by reason of such property not being assessed or advertised, in the* NAME *or* NAMES OF THE LAWFUL OWNER OR OWNERS THEREOF, provided the same shall be advertised *as above directed*, or by reason of the *amount* of taxes due thereon *not being correctly stated*."

SEC. 6. "That the proprietor or proprietors of lots which may be sold under the provisions of this act shall be allowed

the right of redemption in the same manner and according to the like restrictions contained in the act to which this is a supplement."

SEC. 8. "That if, before the day of sale, *advertised* as aforesaid, the owner, his agent or attorney, shall not pay the amount of taxes, with all costs thereon assessed, said lots, &c., shall be sold, &c.; and if at the expiration of *twelve months* from the day of sale the owner shall not appear *and pay*, &c., the *amount* of the *purchase-money* and *cost* and *taxes* accruing *subsequent to the sale* and ten per centum interest per annum on the purchase-money, *it shall and may be lawful for a title in fee simple at the expiration* of said time to be made to the purchaser."

SEC. 11. "That all titles to property conveyed, as aforesaid, on sales for taxes, &c., &c., shall be by *deed* from the *mayor*, under the *seal of the corporation;* which *said conveyance shall be effectual, in law, to convey the title, the requisition of this act having been complied with.*"

Act of May 26, 1824, ch. 195, § 1, 2, & 11.
4 U. S. Stats. at Large, pp. 75, 76, & 77.

We respectfully submit that, the *old* corporation and *its* officers designated in the act of February 20, 1819, having been legislated out of existence, there was no one to *transmit* or *certify* the report provided for by that act, and, further, even if such was not the case, the act of May 26, 1824, *supra*, by its broad provisions, did away with the necessity of *transmitting, certifying*, or *recording* any such report, and, in fact, repealed the act of February 20, 1819, if it had not been previously repealed, as we think it had.

The only other objection that was raised to the tax title was as to whether the advertisement (Rec., pp. 34 and 35) sufficiently indicates the amount. The act of May 26, 1824 (ch. 195, § 2), does not require the amount of the tax for *each* year to be specified where several years' taxes are due, but only that *the amount due on each lot* shall be given and the period for which the same shall be due. It would fully

comply with this statute to give the amount on *each* lot and say that it was due for the period from 1834 to 1841, inclusive. The advertisement gives the years for which the taxes are due and also gives the amount due on each lot, with a $ at the head of the column. It is said it does not distinguish between dollars and cents by inserting a decimal point, but only has a space. The answer is that the act of May 26, 1824, expressly declares that "no sale of real property for taxes, &c., shall be impaired or void by reason of the *amount* of taxes due thereon *not being correctly stated.*" (Act of May 26, 1824, ch. 195, § 2, *supra.*)

We submit that the $ is all that is necessary, and indeed that even if it had been omitted it would not have been fatal. It is only where the law provides for a *judgment* being rendered for the amount of the taxes that in the *judgment*, from the nature thereof, exact precision is required.

"But the assessment-rolls, warrants, or other proceedings *prior* to the judgment for taxes are not rendered invalid or illegal by reason of the absence of a *word* or *character* to the numerals designating the amount of the valuation or the taxes."

Chickering *vs.* Faile, 38 Ill., 342.
S. P. State *vs.* Ring, 29 Minn., 78.

We submit that the tax title was therefore *good, valid, and regular*; and, being *valid*, the legal title undoubtedly passed *thereby* to the plaintiffs in error, and the defendants in error, not having nor either of them having the *legal title*, *cannot* maintain this action for want of such *legal title.*

The official tax book certified by the register is competent evidence of the assessment of the tax.

Rankendorff *vs.* Taylor's Lessee, 4 Peters, 349.

A requirement of a certain number of days' notice in a newspaper is satisfied by *one* publication that number of days before the day fixed.

Andrews *vs.* R. R. Co., 14 Ind., 169.

Muskingum Valley Turnpike *vs.* Ward, 13 Ohio, 120.

Even if the tax title had been irregular (instead of regular), yet the tax deed was admissible as evidence, and proof that the plaintiffs in error had fenced in and enclosed the property was admissible as evidence (as also the other proof offered in support of the tax title) for the purpose of showing that the plaintiffs in error had *entered* into possession *under* and *claimed under* such *tax title* and *not* under any common title or common ancestor.

Todd *vs.* Kauffman, 19 D. C., 304.

So, too, the proof of payment of all taxes by the plaintiffs in error and those under whom they claimed should have been admitted and allowed to be made.

Fletcher *vs.* Fuller, 120 U. S., 534.

The defendants in error claim that Wm. V. H. Brown was a co-tenant and could not purchase the tax title, but the *purchaser* at the tax sale was Obadiah B. Brown, who was a *stranger* to the title. The defendants in error do not pretend that O. B. Brown was an *heir* of Thomas B. Brown, or that he was ever *their co-tenant* or a co-tenant of either of them or of any one under whom they claim.

The time for redemption (two years) *elapsed*, the property was not redeemed by any one, and, the time allowed by law for redeeming it having *expired*, said O. B. Brown obtained his tax deed. It was only after this that William V. H. Brown bought the tax title from O. B. Brown. The proof in the record shows that *during the entire period from a time prior to the tax sale down to a time subsequent to said purchase by Wm. V. H. Brown from O. B. Brown the locus in quo* was

unseated land, that it was *vacant* and *unoccupied*, was part of the *open commons*, was in the "slashes," being a marshy part of said commons, was without any house or building upon any part of it, was unenclosed and unfenced, and was not in the actual occupation of any person during any portion of said period. (Rec., p. 38.)

Such being the case, and O. B. Brown having waited until the time of redemption had *expired*, and having then gotten his *tax deed*, Wm. V. H. Brown, who was *not in possession* of the premises, had a perfect right to purchase the tax title for his *own benefit*, and it would *not enure* to the benefit of the said Elizabeth B. Beale.

"If *unseated* land belonging to two tenants in common be sold for taxes, and *after the time for redemption* one of them *buy it* from the *purchaser* at the tax sale in his *own* name and for his *own* use, the other is entitled to no interest in such purchase; nor will the fact of indebtedness by the purchaser of the tax-sale title to him who was his co-tenant to an amount equal to the one-half of the purchase-money alter the nature of the case."

Lewis *vs.* Robinson, 10 Watts' R., 354.

"After a sale of *unseated* lands by the treasurer *and the time for redemption has passed* one of two tenants in common may purchase it *from the treasurer's vendee*, and such purchase *will not enure* to the benefit of the *other* tenant in common."

Reinbeth *vs.* Improvement Co., 29 Pa. St., 139.

In another case the court say:

"It has been held that a tenant in common or joint owner cannot by a purchase at tax sale and a conveyance thereunder oust his co-tenant, but that such purchase is presumed to have been made for the benefit of both. The question for determination in the case at bar is materially different from this. *Here the superior title was vested in a stranger and had been for two years, and the question is whether one of the former joint owners can purchase such title for his own exclusive benefit, or whether when the tax title accrued and became vested in Evans*

the joint ownership previously existing was not thereby dissolved. The chancellor concedes, in Van Horn *vs.* Fonda, that cases may exist where one tenant in common may purchase in an outstanding title for his own exclusive benefit, and the true rule seems to be, as there announced, that where the tenants or owners *are in possession* under an imperfect title one cannot purchase an outstanding title and appropriate the whole to himself and thus oust the other; *but this principle does not extend to a tenant in common after eviction.* As neither of *the joint owners was in possession, the outstanding title was not purchased to protect the possession or any other right either of the former joint owners then had. Whatever title they previously had was merged in the superior title, and either could purchase for his own exclusive benefit as well as a stranger to the previous title could.*"

Alexander *vs.* Sully, 50 Iowa, 192.
S. P. Coleman *vs.* Coleman, 3 Dana (Ky.), 398 [400].

It is clear from these authorities that in the case at bar William V. H. Brown and Mrs. Beale having both been out of possession and the property having been sold for taxes to a *stranger*, who, after the time for redemption had expired, had received his tax deed, that said William V. H. Brown had after that a perfect right to purchase the same from such tax-sale purchaser, as he did, for his own exclusive benefit, and that his purchase would not enure to the benefit of any former co-tenant. Had William V. H. Brown bought from the tax-sale purchaser *before* the time for redemption expired instead of *after* it expired his purchase of the tax title might under those circumstances have enured to the benefit of any co-tenant of his, but even in that case what he paid for such tax title and the subsequent taxes paid by him would have constituted a charge and a lien upon the property in his favor, entitling him to hold the property against a co-tenant until such co-tenant paid or tendered him such co-tenant's share of said expenses and taxes.

In Watkins *vs.* Eaton land owned *in common* was sold for taxes, and before the time of redemption elapsed one of the

co-tenants redeemed his own and his co-tenant's interest and took a release thereof to himself from the tax-sale purchaser. The court said:

"Such redemption of another's share by one of the co-tenants will transfer to him a *lien* thereon for reimbursement, &c. *Until such reimbursement has been made or tendered to the co-tenant who redeemed or to the owner holding under him no action can be maintained by the delinquent co-tenant against either of them for recovery of the land.* A sale made for the payment of taxes is but an *incumbrance* upon the estate *so long as the right to redeem exists.* * * * *The principle applied in this case will not be applicable should one tenant in common purchase the whole estate from the purchaser at a sale for the payment of taxes after the right to redeem had expired.* In *such* case *one* of the co-tenants *could derive no benefit* from the purchase made by *another* co-tenant."

Watkins *vs.* Eaton, 30 Me., 529 [535].

And where land had been conveyed to a *tenant for life*, with remainder in fee simple to several others as *co-tenants in remainder*, and the *life tenant* was *in possession*, and *one* of the co-tenants in remainder lived *with the life tenant* upon the property, and the life tenant not having paid or being able to pay the taxes, and the co-tenant in remainder who lived with the life tenant upon the premises having bought in the property at tax sale for one year's taxes, and having, during the life of the life tenant, paid the taxes for many years, both before and after such tax-sale purchase, because the life tenant had not and could not pay them, and said co-tenant in remainder, in a suit by the other co-tenants in remainder, having appealed from an adverse decision by the court below, the court above, after saying that a sale for taxes would have defeated the expectancy of the remaindermen by transferring the fee, said:

"If appellant prevented this by acquiring title at the sale for taxes for the common benefit, the costs to her of doing this *should be made a charge on the common property thus saved.* This is true, also, *as to taxes* on the property in which the

remaindermen had an expectancy, *paid by appellant*, in the lifetime of the tenant for life. Taxes were a *lien* on the property, and if *not paid* it was *liable* to be *sold*, whereby the rights of the remaindermen would have been *defeated;* and if the tenant for life did *not pay* the taxes and appellant *did*, and thereby *saved* the estate for the remaindermen, *the cost to her of doing this is a charge on the common property.*"

Harrison *vs.* Harrison, 56 Miss., 174, 175.

We submit, therefore, that the assignments of error before stated in this brief are well taken, and that the said court in general term should have reversed the rulings and judgment of the circuit court both upon the bills of exceptions and upon appeal, and that said court erred in ruling as in each of the assignments of error is mentioned and complained of, and that said court in general term erred in adjudging and ordering "that there is no error in the rulings and judgment of the circuit court herein, and the said judgment is hereby in all things affirmed, &c.," &c, and we submit that the judgment of said court in general term should be reversed and said errors corrected.

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